



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



*Stanford
Law Library*



Given by
Title Insurance
and
Trust Company
Foundation

200
111
4100
111

Handwritten: Amended Edition

A
SUPPLEMENT
TO
MR. BARTON'S
PRECEDENTS IN CONVEYANCING,

CONTAINING
ALL THE MISCELLANEOUS ASSURANCES
THERE REFERRED TO,

AND ALSO
A GREAT VARIETY OF OTHER MINOR ASSURANCES NOT COMPRISED
IN THAT WORK,
WITH
COPIOUS EXPLANATORY AND PRACTICAL NOTES.

By S. F. T. WILDE, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

The Third Edition.

TO WHICH ARE ADDED, A GREAT VARIETY OF
MERCANTILE AND COMMERCIAL PRECEDENTS,

AND ALSO
FORMS OF BILLS AND OTHER PROCEEDINGS IN PARLIAMENT;
SUITED TO PAROCHIAL AND COUNTY PURPOSES.

By CHARLES BARTON, JUN. OF LINCOLN'S INN, Esq.

IN THREE VOLUMES.

VOL. II.—B—M.

LONDON:
HENRY BUTTERWORTH,
LAW BOOKSELLER AND PUBLISHER,
7, FLEET STREET, NEAR TEMPLE-BAR.

1826.



CONTENTS.

*.° Such of the Precedents and other parts of the work to which an asterisk is prefixed, have been inserted by the PRESENT EDITOR.

BANKRUPTCY.

	PAGE
*ABSTRACT of the Bankrupt Act.....	1 6 Geo. 4.c. 16.

BARGAIN AND SALE.

BARGAIN AND
SALE.

No. CLXXIV.

A Bargain and Sale to make a <i>Tenant</i> to the <i>Præcipe</i> for suffering a legal Recovery by a Tenant in Tail in possession (with variations).	29	<i>Tenant to the Præcipe.</i>
--	----	-----------------------------------

No. CLXXV.

*A Bargain and Sale to an Incumbent of a Resident Dwelling <i>House</i> , under Act of Parliament (with variations).....	44	<i>House, &c.</i>
--	----	-----------------------

No. CLXXVI.

A Bargain and Sale of <i>Timber</i> growing upon an Estate by the owner of the inheritance (with variations).....	47	<i>Timber.</i>
---	----	----------------

CONTENTS.

BILL OF SALE.

		PAGE
BILL OF SALE.	No. CLXXVII.	
<i>Goods.</i>	A Bill of Sale (or Bargain and Sale) of <i>Goods</i> , &c. for securing the payment of a sum of money (with variations).....	52
	No. CLXXVIII.	
<i>Ship.</i>	A Bill of Sale of a <i>Ship</i> at Sea by a sole owner, see also <i>post</i> . "HYPOTHECATION.".....	57
	No. CLXXIX.	
<i>Ship.</i>	*A Bill of Sale (concise) of a <i>Ship</i> from two persons of their respective parts.....	65
	No. CLXXX.	
<i>Merchandise.</i>	*A Bill of Sale of a part of Goods on board a <i>Ship</i> in consideration of a Debt.....	67
	No. CLXXXI.	
<i>Wages.</i>	*A Bill of Sale by a Seaman of <i>Wages</i> as a security for a Debt.....	69
	No. CLXXXII.	
<i>Merchandise.</i>	*A Bill of Lading of Goods on board a <i>Ship</i> or vessel.....	71

BONDS.

See also *post*. "INDEMNITY."

BONDS.	No. CLXXXIII.	
<i>Account.</i>	*A Bond from an Administrator (and sureties) to the Ordinary or Ecclesiastical Judge duly to <i>account</i> for Intestate's effects,.....	73
	No. CLXXXIV.	
<i>Account.</i>	*A Bond from a Broker to <i>account</i> for Goods delivered to him for sale	77

CONTENTS.

	PAGE	
No. CLXXXV.		
A Bond by a Clerk (and a surety) duly to <i>account</i> for what may come to his hands.....	78	BONDS. <i>Account.</i>
No. CLXXXVI.		
*A Bond to <i>account</i> for the value of Goods entrusted to a Special Agent abroad for Sale.....	80	<i>Account.</i>
No. CLXXXVII.		
*A Bond from a Nominee to an Ordinary (and his surety) for duly <i>accounting</i> and applying money borrowed for building or repairing the Residence of an Incumbent.....	83	<i>Account.</i>
No. CLXXXVIII.		
*A Bond from a Renterwarden of a Company duly to <i>account</i>	84	<i>Account.</i>
No. CLXXXIX.		
*A Bond (in usual form) from the Distributor of Stamps (and sureties) to his Majesty to <i>account</i> for monies received.....	85	<i>Account.</i>
No. CXC.		
*A Bond from a Surveyor of High Roads to <i>account</i> for monies coming to his hands.....	87	<i>Account.</i>
No. CXCI.		
*A Bond from a Surveyor of Turnpike Roads duly to <i>account</i>	88	<i>Account.</i>
No. CXCH.		
*A Bond from a (Treasurer or) Manager of a Joint-stock or other Public Company (and Surety) duly to <i>account</i> , &c.....	89	<i>Account.</i>
No. CXCHH.		
*A Bond by the Father of an <i>Apprentice</i> to provide him with clothes, &c. during his Apprenticeship.....	91	<i>Apprentice.</i>
No. CXCHV.		
A Bond upon the Submission of Disputes to <i>arbitration</i> to abide the award (with variations).....	93	<i>Arbitration.</i>

CONTENTS.

BONDS.	No. CXCIV.	PAGE
<i>Bottomry.</i>	A Bottomry Bond.....	94
No. CXCVI.		
<i>Execu'te.</i>	*A Bond from a Part-owner of a Ship, that another Part-owner (abroad) shall join in <i>executing</i> a Bill of Sale.....	96
No. CXCVII.		
<i>Execute.</i>	A Bond from an Infant to <i>execute</i> conveyance when of Age.....	98
No. CXCVIII.		
<i>Indemnity.</i>	*A Bond to <i>Indemnify</i> an Accommodation <i>Acceptor</i> or Indorser of a Promissory Note or Bill of Exchange.....	101
No. CXCIX.		
<i>Indemnity.</i>	*A Bond to Indemnify a Person paying a Debt to a next of kin before Letters of <i>Administration</i> obtained.....	102
No. CC.		
<i>Indemnity.</i>	*A Bond to <i>Indemnify</i> a person becoming <i>Bail</i> on a Writ of Error...	103
No. CCI.		
<i>Indemnity.</i>	*A Bond to <i>Indemnify</i> a Parish against the Maintenance of a <i>Bas-tard</i> Child.....	105
No. CCII.		
<i>Indemnity.</i>	*A Bond under 9 & 10 W. 3. c. 17. in the case of a <i>Lost Bill</i> to obtain from drawer another Bill.....	107
No. CCIII.		
<i>Indemnity.</i>	*A Bond to <i>Indemnify</i> on paying a <i>Lost Bill</i>	109
No. CCIV.		
<i>Indemnity.</i>	*Bond for delivering up a <i>Lost Bond</i> or other special security when found, and to <i>Indemnify</i> in the mean time.....	111
No. CCV.		
<i>Indemnity.</i>	*A Bond to <i>Indemnify</i> an unwilling Plaintiff or Defendant against costs of a Suit.....	113

CONTENTS.

	PAGE	
No. CCVI.		
*A Bond to <i>Indemnify</i> a Master on discharging his Apprentice against the <i>Covenants</i> in the Articles.....	114	<i>BOND.</i> <i>Indemnity.</i>
No. CCVII.		
*A Bond from a Surviving Partner to Indemnify the Executor of a deceased Partner from <i>Debts</i>	116	<i>Indemnity.</i>
No. CCVIII.		
A Bond to a Purchaser as an <i>Indemnity</i> against a <i>Defect of Title</i>	118	<i>Indemnity.</i>
No. CCIX.		
A Bond from a Vendor or other Grantor to <i>Indemnify</i> a Purchaser or grantee against a Wife's <i>Dower</i>	120	<i>Indemnity.</i>
No. CCX.		
*A Bond to <i>Indemnify</i> a Purchaser or other Person against <i>Ground Rents</i> chargeable upon Premises.....	122	<i>Indemnity.</i>
No. CCXI.		
*A Bond to <i>Indemnify</i> a retiring Trader permitting his <i>name</i> to be used by his successor.....	124	<i>Indemnity.</i>
No. CCXII.		
*A Bond to <i>Indemnify Sheriff</i> on his selling goods under an Execution	125	<i>Indemnity.</i>
No. CCXIII.		
*A Bond to <i>Indemnify</i> a <i>Sheriff</i> on paying over to a Creditor money levied under an Execution.....	127	<i>Indemnity.</i>
No. CCXIV.		
A Bond to <i>Indemnify</i> a <i>Surety</i> bound for the Obligor for payment of a sum of money.....	129	<i>Indemnity.</i>
No. CCXV.		
*A Bond to <i>Indemnify</i> a <i>Surety</i> from the payment of an Annuity.....	131	<i>Indemnity.</i>
No. CCXVI.		
*A Bond to <i>Indemnify</i> a <i>Surety</i> against Bills of Exchange accepted by him for the benefit of Creditors of the Obligor.....	133	<i>Indemnity.</i>

CONTENTS.

		PAGE
	No. CCXVII.	
BONDS.		
<i>Indemnity.</i>	*A Bond to <i>Indemnify</i> a <i>Surety</i> on the Obligor's admittance into one of the Inns of Court.....	135
	No. CCXVIII.	
<i>Indemnity.</i>	*A Bond to <i>Indemnify Trustees</i> or <i>Executors</i> on permitting a Person to retain money directed to be otherwise disposed of.....	136
	No. CCXIX,	
<i>Marry.</i>	*A Bond given to <i>marry</i> a woman within a given time or in default to pay a sum of money.....	138
	No. CCXX.	
<i>Passport.</i>	*A Bond by a Master of a Vessel to deliver up a <i>Pass</i> received from the Admiralty on his returning from his voyage.....	139
	No. CCXXI.	
<i>Pay.</i>	*A Bond from a Merchant or other person for <i>re-payment</i> of sums which may be advanced to himself or a third person by virtue of a Letter of Credit.....	142
	No. CCXXII.	
<i>Pay.</i>	*A Bond to a Trustee for <i>payment</i> of a yearly or weekly <i>allowance</i> to a Wife for her support on separation.....	143
	No. CCXXIII.	
<i>Pay.</i>	A Bond for securing the <i>Payment</i> of an <i>Annuity</i> to a Grantee during the life of the Grantor (with variations).....	145
	No. CCXXIV.	
<i>Pay.</i>	A Bond given by a customer to Bankers for securing the <i>repayment</i> of money they may advance beyond the <i>balance</i> in their hands (with variations).....	149
	No. CCXXV.	
<i>Pay.</i>	*A Bond by a Customer and Surety to secure a present debt and floating <i>Balance</i> to Bankers.....	152
	No. CCXXVI.	
<i>Pay.</i>	*A Bond by a Country Solicitor to his Agent in London for the <i>re-payment</i> of <i>Balances</i> on account of monies which may be advanced.....	156

CONTENTS.

	PAGE	BONDS.
No. CCXXVII.		
*Bond from a Merchant to <i>pay Bills of Exchange</i> to be drawn upon him by his Factor abroad.....	157	Pay.
No. CCXXVIII.		
*Bond from a Debtor to <i>pay Composition</i> agreed to be accepted by his Creditors.....	158	Pay.
No. CCXXIX.		
*Bond by owners of a Ship, &c. to <i>pay Freight</i> , &c. for goods shipped (usual form).....	160	Pay.
No. CCXXX.		
*Bond from a Retail Trader (and Surety) to a Manufacturer or wholesale dealer for <i>Payment of Goods</i> which may be supplied to order	161	Pay.
No. CCXXXI.		
*Bond from a Purchaser for <i>Payment of Legacies</i> or Portions chargeable on the Estate when Minors become of Age.....	163	Pay.
No. CCXXXII.		
Bond for <i>payment of money</i> at one time (with variations).....	164	Pay.
No. CCXXXIII.		
Bond for <i>payment of money</i> to accompany <i>Mortgage</i> in Fee (with variations).....	168	Pay.
No. CCXXXIV.		
*Bond from the Purchaser of an Equity of Redemption to <i>pay off</i> the <i>Mortgage Money</i> and Indemnify the Mortgagor.....	172	Pay.
No. CCXXXV.		
*Bond for <i>payment of money</i> advanced upon the deposit of Title Deeds.....	174	Pay.
No. CCXXXVI.		
Bond by Husband to <i>pay</i> Trustees a sum lent to him in pursuance of a Power in Marriage Settlement.....	175	Pay.

CONTENTS.

		PAGE
	No. CCXXXVII.	
BONDS.		
Pay.	Bond by an intended Husband for <i>Payment</i> of a Sum of <i>Money</i> to Wife on surviving her husband (with variations).....	177
	No. CCXXXVIII.	
Pay.	*Bond by an intended Husband upon his Marriage for the <i>payment</i> of a sum of <i>money</i> (or an annuity) to his wife or her Appointees upon his decease if she survive him, and to permit her to make a will.....	179
	No. CCXXXIX.	
Pay.	*Bond for <i>Payment</i> of a Sum of <i>Money</i> to a person as a <i>Recompense</i> for recovering an Estate for the Obligor.....	181
	No. CCXL.	
Pay.	Bond for <i>Payment</i> of part of <i>Purchase-money</i> retained on account of Minority or other cause.....	182
	No. CCXLI.	
Pay.	Bond from a Surviving Partner for the <i>payment</i> of Share to the Executors of deceased Partner (with variations).....	184
	No. CCXLII.	
Pay.	Bond for <i>Payment</i> of <i>Rent</i> and Performance of Covenants in a Lease (and to Indemnify the Vendor) (with variations).....	186
	No. CCXLIII.	
Perform.	Bond to <i>perform award</i> upon the submission of Disputes to Arbitration.....	189
	No. CCXLIV.	
Perform.	*Bond from a Builder and Sureties for <i>Performance</i> of a Contract for erecting Buildings.....	190
	No. CCXLV.	
Perform.	Bond for the <i>Performance</i> of Covenants in a Grant of the next Presentation to an Advowson.....	192
	No. CCXLVI.	
Perform.	Bond for <i>Performance</i> of Covenants (and Indemnity) on Dissolution of Co-partnership.....	194

CONTENTS.

PAGE

No. CCXLVII.

BONDS.

*Bond from a Master of a Ship to an Owner to *perform Voyage* and deliver up the Ship when performed..... 196 *Perform.*

No. CCXLVIII.

*Bond from a Chief Mate of a Ship to *perform voyage* and deliver up the Ship in case of death of Master..... 198 *Perform.*

No. CCXLIX.

A Post Obit Bond..... 200 *Post Obit.*

No. CCL.

*Bond to *produce* when found *Title Deeds* which have been mislaid..... 202 *Produce.*

No. CCLI.

Bond by a Creditor to *prove* a *Debt* for the issuing a Commission of Bankruptcy 204 *Prove Debt.*

No. CCLII.

Bond to *refund* a *Legacy* in case there shall prove to be a deficiency of Assets (with variations)..... 206 *Refund Legacy.*

No. CCLIII.

Bond by an Attorney signing a purchase-deed in the name of his Principal, to *return* the purchase-money if the Principal be not alive at the time of signing..... 209 *Repay.*

No. CCLIV.

A *Respondentia* Bond..... 212 *Respondentia.*

No. CCLV.

Bond to *resign* a living on Request..... 214 *Resignation.*

No. CCLVI.

*Bond to *return* a part of the premium given with Apprentice if he die within a given period..... 216 *Return premium.*

No. CCLVII.

*A Bond from the Master or Owner of a Ship or Vessel to the King on its being *registered*..... 218 *Registry.*

CONTENTS.

		PAGE
No. CCLVIII.		
BONDS.		
<i>Title.</i>	Bond for the <i>Title</i> and Quiet Enjoyment of Freehold (with variations)	221
No. CCLIX.		
<i>Title.</i>	Bond for quiet Enjoyment from a Vendor to a Purchaser where doubts subsist respecting the <i>Title</i>	225
No. CCLX.		
<i>Recovery.</i>	*Bond for an Issue in Tail to <i>suffer</i> a <i>Recovery</i> to the use of a Purchaser or Mortgagee when of Age (with variations).....	227
No. CCLXI.		
<i>Trade.</i>	*Bond not to carry on a certain <i>Trade</i> within a given distance.....	229
No. CCLXII.		
<i>Transfer stock.</i>	Bond to <i>Transfer</i> to the Oblige Bank Annuities lent to the Obligor (with variations).....	230

CERTIFICATE.

CERTIFICATE.

No. CCLXIII.		
<i>Baptism.</i>	*A <i>Certificate</i> or verification by a Notary Public of a <i>Baptism</i>	233
No. CCLXIV.		
<i>Contract.</i>	*A Certificate by the Surveyor General of His Majesty's Land Revenue of a <i>Contract</i> for the Sale of a Fee-farm Rent.....	234
No. CCLXV.		
<i>Discharge.</i>	A Certificate of the <i>Discharge</i> of a Mortgage (with variations).....	236
No. CCLXVI.		
<i>Life.</i>	*Certificate by a Rector, &c. of a person being <i>living</i>	238
No. CCLXVII.		
<i>Nomination.</i>	Certificate of the <i>Nomination</i> to a Curacy (with variations).....	239

CONTENTS.

No. CCLXVIII.	PAGE	
A Nomination or Appointment of a <i>Chaplain</i> by a Nobleman (with variations).....	240	CERTIFICATE. <i>Chaplain.</i>
No. CCLXIX.		
A Certificate of the <i>Nomination</i> of a Curate as a Title to Orders.....	242	<i>Nomination.</i>
No. CCLXX.		
*Certificate of a Person being a <i>Notary Public</i>	243	<i>Notary.</i>
No. CCLXXI.		
*Certificate by Clerk of the Peace of <i>Notice</i> having been given of a Printing Press, or of carrying on the business of a Letter Founder, &c. to be entered in pursuance of Act of Parliament...	244	<i>Notice.</i>
No. CCLXXII.		
*A Certificate of the <i>Registry</i> of a Ship or Vessel in pursuance of Act of Parliament.....	245	<i>Registry.</i>
No. CCLXXIII.		
*A Certificate to the Ordinary of the Condition of the Dwelling-House belonging to a Benefice made in pursuance of Act of Parliament.....	247	<i>Repairs.</i>
No. CCLXXIV.		
*A Certificate of the <i>Residence</i> of an Incumbent for the period required by Act of Parliament.....	248	<i>Residence.</i>

CHARGE.

CHARGE.

No. CCLXXV.

*Charge upon Premises already charged with an <i>Annuity</i> by and to the same Grantor and Grantee (with variations).....	249	<i>Annuity.</i>
--	-----	-----------------

CONTENTS.

		PAGE
	No. CCLXXVI.	
CHARGE.		
<i>Annuity.</i>	*Charge (further) by Indorsement on the first grant (with variations)	254
	No. CCLXXVII.	
<i>Annuity.</i>	*A Charge of an <i>Annuity</i> upon Premises by way of collateral security so as to avoid a forfeiture for alienation under a devise; also provision for an accumulation fund to keep down arrears.....	257
	No. CCLXXVIII.	
<i>Church rates.</i>	*A Charge by Churchwardens upon the <i>Church Rates</i> of a Sum borrowed for Building a Chapel or Church.....	275
	No. CCLXXIX.	
<i>County rates.</i>	*A Charge by way of Mortgage of <i>County Rates</i> for Building or Repairing a County Gaol or House of Correction	277
	No. CCLXXX.	
<i>County rates.</i>	*A Charge upon <i>County Rates</i> for building a House of Reception for Lunatics.....	279
	No. CCLXXXI.	
<i>Debt.</i>	*A Charge of a <i>Bond Debt</i> on Real Property by Indorsement on the Bond and Deposit of Title Deeds.....	281
	No. CCLXXXII.	
<i>Jointure.</i>	*A Charge of Annuity to an intended wife by way of <i>Jointure</i> by owners of the inheritance, see also <i>post.</i> "COVENANT."	282
	No. CCLXXXIII.	
<i>Mortgage.</i>	*A Charge by a Tenant for Life of a Sum of Money upon Lands by way of <i>Mortgage</i> in virtue of a Power.....	289
	No. CCLXXXIV.	
<i>Mortgage.</i>	*A Charge on the Equity of Redemption by Mortgagor where an additional sum is advanced by the original Mortgagee.....	292
	No. CCLXXXV.	
<i>Money.</i>	*A Charge by a Feme Covert of a Sum of <i>Money</i> upon settled Premises for her own use in pursuance of a Power.....	296

CONTENTS.

No. CCLXXXVI.	PAGE	CHARGE.
A Charge (further) by indorsement upon a Mortgage of Freehold or other Premises for securing the payment of a sum advanced since the original Mortgage (with variations).....	300	<i>Mortgage.</i>
No. CCLXXXVII.		
*A Charge (further) upon <i>Mortgaged</i> Premises by Indorsement, where a Power of Sale was given to the Mortgagee.....	307	<i>Mortgage.</i>
No. CCLXXXVIII.		
*A Charge upon <i>Poor Rates</i> by Guardians of the Poor.....	309	<i>Poor Rates.</i>
<hr style="border: 1px solid black; margin: 5px 0;"/> CHARITY.		
See post. "GIFT."		
<hr style="border: 1px solid black; margin: 5px 0;"/> CHARTERPARTY.		
No. CCLXXXIX.		
A Gen eral Charterparty of <i>Affreightment</i> (common form).....	310	<i>CHARTERPARTY.</i> <i>Affreightment.</i>
No. CCXC.		
*A Charterparty by several owners in Copartnership to Freighters in Copartnership, to proceed abroad <i>with Convoy</i>	316	<i>With Convoy.</i>
No. CCXCI.		
*A Charterparty by one Copartner owner on behalf of the rest, and a part Freighter on behalf of the others, to sail <i>with or without Convoy</i> (with variations).....	319	<i>With or without Convoy.</i>
<hr style="border: 1px solid black; margin: 5px 0;"/> COGNOVIT.		
See also Vol. III. "WARRANT OF ATTORNEY."		
No. CCXCII.		
*A Cognovit in <i>Assumpsit</i> (with variations).....	323	<i>COGNOVIT.</i> <i>Assumpsit.</i>
No. CCXCIII.		
*Cognovit in Ejectment.....	324	<i>Ejectment.</i>

CONTENTS.

COMPANY.

See "PARTNERSHIP."

CONFIRMATION.

		PAGE
CONFIRMATION.	No. CCXCIV.	
<i>Devise.</i>	A Deed of Confirmation by an Heir at Law of an Estate <i>devised</i> to a stranger (with variations).....	325
	No. CCXCV.	
<i>Deed.</i>	A Confirmation by an Infant on his coming of Age of a Feoffment executed by him during his Minority.....	331
	No. CCXCVI.	
<i>Deed.</i>	*A Confirmation by the Principal of the act of his Attorney (indorsed on a Deed of Conveyance by the Attorney).....	334
	No. CCXCVII.	
<i>Deed.</i>	*A Deed of Confirmation by several persons on their coming of age of <i>Deeds</i> executed by them during Minority.....	335
	No. CCXCVIII.	
<i>Lease.</i>	*Confirmation of a <i>Lease</i> supposed to be defective, by an indorsement thereupon	337
	No. CCXCIX.	
<i>Rent-Charge.</i>	*A Confirmation by Heir or Reversioner of a <i>Rent-charge</i> , granted by way of Jointure [to be indorsed on a Marriage Settlement].....	339
	No. CCC.	
<i>By vendor.</i>	A Deed of Confirmation to a Purchaser by a <i>Vendor</i> , to be indorsed on the purchase deed, in pursuance of his covenant for further assurance	341

CONTENTS.

CONSENT.

	PAGE	
No. CCCI.		
*A Consent by Executors to the <i>bequest</i> of Leasehold Premises or other specific Legacy.....	343	CONSENT. <i>Bequest.</i>
No. CCCII.		
*A Consent by the owner of Land to a <i>Highway</i> being carried over it.	345	<i>Highway.</i>
No. CCCIII.		
*A Deed of Consent by a Father to the raising part of a child's <i>portion</i> , in pursuance of a Power (with variations).....	346	<i>Portion.</i>
No. CCCIV.		
*A Consent by the first Commissioner of the Treasury, &c. to the building or <i>repairing</i> a Parsonage-house, &c. where the patronage is in the Crown.....	348	<i>Repair.</i>
No. CCCV.		
*A Consent by an Ordinary and Patron to a Parsonage-house being <i>repaired</i>	350	<i>Repair.</i>
No. CCCVI.		
*A Deed of Consent by Trustees to the exercise of a Power of <i>Revocation</i> of a Settlement.....	352	<i>Revocation.</i>

COVENANT.

No. CCCVII.		
*A Deed of Covenant for the <i>apportionment</i> of rent between Purchasers of different parts of Leasehold Premises held under the same Lease.....	354	COVENANT. <i>Apportionment.</i>

CONTENTS.

COVENANT.	No. CCCVIII.	PAGE
<i>Award.</i>	*A Deed of Covenant by Parties in difference to abide the <i>Award</i> of Arbitrators	358
	No. CCCIX.	
<i>Defeazance.</i>	*A Deed of Covenant by way of <i>Defeazance</i> on a Post Obit Bond and Warrant of Attorney	360
	No. CCCX.	
<i>Fine.</i>	Deed of Covenant to levy a <i>Fine</i> sur cognizance de droit come ceo, and to lead the uses	362
	No. CCCXI.	
<i>Indemnity.</i>	Deed of Covenant to <i>Indemnify</i> a Purchaser against any mis-application of Purchase money	371
	No. CCCXII.	
<i>Indemnity.</i>	*A Deed of Covenant by a Vendor or other Grantor to <i>Indemnify</i> against supposed outstanding Mortgage term or other Incumbrance	375
	No. CCCXIII.	
<i>Jointure.</i>	*A Deed of Covenant for making a <i>Legal Jointure</i> after an intended marriage shall take effect (see also <i>ante</i> , "CHARGE.")	377
	No. CCCXIV.	
<i>Jointure.</i>	*Covenant to surrender Copyhold Lands to secure an Annuity by way of <i>Jointure</i>	381
	No. CCCXV.	
<i>Jointure.</i>	*A Deed of Covenant by an intended Husband, Tenant for Life, to charge Estates with a Rent-charge in lieu of a <i>Jointure</i> at a future period, in pursuance of a Power	385
	No. CCCXVI.	
<i>Procure.</i>	*Deed of Covenant to <i>procure</i> an outstanding Term to be assigned ...	398
	No. CCCXVII.	
<i>Procure.</i>	*Deed of Covenant to <i>procure</i> a conveyance of an outstanding Legal Fee	400

CONTENTS.

No. CCCXVIII.	PAGE	COVENANT.
A Deed of Covenant by a Vendor for the <i>Production of Title Deeds</i> retained by him (with variations).....	402	<i>Production of deeds.</i>
No. CCCXIX.		
A Deed of Covenant for the <i>Production</i> of the original <i>Lease</i> , by a Lessee to an Assignee, of Leasehold Premises	408	<i>Production of lease.</i>
No. CCCXX.		
A Deed of Covenant to <i>suffer a Recovery</i> and to direct the uses.....	411	<i>Suffer recovery.</i>
No. CCCXXI.		
Deed of Covenant from a Mortgagee for <i>Re-delivering Title Deeds</i> to the Mortgagor on re-payment of the Mortgage money, and for producing them in the mean time.....	414	<i>Deliver title deeds.</i>
No. CCCXXII.		
*A Deed of Covenant with a Surety for the Grantee of an Annuity to accept a sum in exoneration of further liability.....	417	<i>Release.</i>
No. CCCXXIII.		
A Deed of Covenant to <i>stand seised</i> to the use of a Child or Relation.	420	<i>Stand seised.</i>

DECLARATION.

See *post.* Vol. III. "TRUST" and "USE."

DEFEAZANCE.

See *ante*, "COVENANT," and *post.* Vol. III. "WARRANT OF ATTORNEY."

DEMISE.

No. CCCXXIV.

	PAGE	DEMISE.
*A Demise by way of Lease of <i>Forest Lands</i> acquired by incroachment	424	<i>Forest Lands.</i>

CONTENTS.

DEMISE.	No. CCCXXV.	PAGE
<i>Glebe Land.</i>	*A Demise, by way of Mortgage, of <i>Glebe Lands</i> , &c. by an incumbent	425
	No. CCCXXVI.	
<i>Prevent forfeiture.</i>	*Demise by Tenant for Life, remainder to his issue unborn, remainder in fee to himself, in order to guard against <i>Forfeiture</i> on his barring the remainder by Fine (with variations).....	428
	Rider A.	
<i>Prevent forfeiture.</i>	*Variation to the Preceding Precedent where a subsisting Term is assigned	431
	No. CCCXXVII.	
<i>Preserve powers.</i>	Demise by Tenant for Life to a Purchaser for a Term of years, if Tenant for Life shall so long live, in order to <i>Preserve Powers</i> of Leasing	434

DEPOSITION.

DEPOSITION.	No. CCCXXVIII.	
<i>Certificate.</i>	*A Deposition verifying a <i>Certificate</i> of Baptism, Burial or Marriage.	441
	No. CCCXXIX.	
<i>Clerk's service.</i>	*A Deposition of the <i>Service</i> of a <i>Clerk</i> under Articles.....	442
	No. CCCXXX.	
<i>Debt.</i>	*A Deposition of a <i>Debt</i> owing to support a Commission of Bankruptcy, where the Bankrupt was an Underwriter.....	443
	No. CCCXXXI.	
<i>Execution.</i>	*A Deposition of the due <i>Execution</i> of a submission to Arbitration...	445
	No. CCCXXXII.	
<i>Execution.</i>	*A Deposition of the <i>Execution</i> of Deeds of Lease and Release or other Conveyance.....	446

CONTENTS.

No. CCCXXXIII.	PAGE	DEPOSITION.
*A Deposition of the <i>Execution</i> of a Letter of Attorney.....	447	<i>Execution.</i>
No. CCCXXXIV.		
*A Deposition of the <i>Execution</i> of a Warrant of Attorney to confess Judgment (with variation).....	448	<i>Execution.</i>

DEPUTATION.

See also *ante*, Vol. I. "APPOINTMENT."

No. CCCXXXV.	DEPUTATION.
*A Deputation of a <i>Clerk of the Peace</i> by the Custos Rotulorum of the County.....	449 <i>Clerk of the Peace.</i>
No. CCCXXXVI.	
*A Deputation of a <i>Gaoler</i> by the Sheriff.....	451 <i>Gaoler.</i>
No. CCCXXXVII.	
*A Deputation of a <i>Land Steward</i> for general Superintendence and Receiving Rents of an Estate.....	454 <i>Steward.</i>

DISCLAIMER.

No. CCCXXXVIII.	DISCLAIMER.
*A Disclaimer of Title by a Trustee under a Conveyance or Will.....	457 <i>Right, &c.</i>
No. CCCXXXIX.	
*A Deed of Disclaimer of Interest in a <i>Suit</i> by one or more.....	459 <i>Suit.</i>

CONTENTS.

DONATION.

See *post.* Vol. III. "PRESENTATION."

ENFRANCHISEMENT.

ENFRANCHISE- MENT.	No. CCCXL.	PAGE
<i>Copyholds.</i>	A Deed of Enfranchisement of <i>Copyhold</i> Premises.....	461

EXCHANGE.

EXCHANGE.	No. CCCXLI.	
<i>Freeholds, &c.</i>	A Deed of Exchange of <i>Freehold</i> Premises (with variations).....	470
	No. CCCXLII.	
<i>Freeholds.</i>	A Conveyance of <i>Freehold</i> Lands in Exchange, by Lease and Release.	475
	No. CCCXLIII.	
<i>Forest Lands.</i>	*An Exchange of <i>Forest waste Lands</i> for <i>Freehold</i> Lands adjoining.	483
	No. CCCXLIV.	
<i>Forest Lands.</i>	*An Exchange of <i>Forest waste Lands</i> for <i>Leasehold</i> Premises adjoining.....	485
	No. CCCXLV.	
<i>Glebe, &c.</i>	*An Exchange of <i>Glebe</i> Lands, Tithes, &c. by an Incumbent.....	486
	No. CCCXLVI.	
<i>Life Estate.</i>	*A Deed of Exchange of <i>Freehold</i> Lands, &c. by <i>Tenant for Life</i> , by mutual Demises.....	489

CONTENTS.

FEOFFMENT.

	PAGE	FEOFFMENT.
No. CCCXLVII.		
A Deed of Feoffment by an <i>Infant Heir in Gavelkind</i>	492	<i>By Infant Heir in Gavelkind.</i>
No. CCCXLVIII.		
A Deed of Feoffment by a <i>Termor</i> for the purpose of acquiring the Fee.....	495	<i>By Termor.</i>

FINES.

No. CCCXLIX.		
A Fine sur cognizance de droit <i>come ceo</i> , &c. (with variations).....	501	<i>FINE.</i> <i>Come ceo.</i>
No. CCCL.		
A Fine sur cognizance de droit <i>tantum</i> , by a man and his wife passing an Estate in Reversion in Lands the inheritance of the wife (with variations).....	511	<i>Tantum.</i>
No. CCCLI.		
A Fine <i>sur concessit</i> , by a man and his wife passing an Estate for Life in Lands the inheritance of the husband (with variations).....	513	<i>Sur concessit.</i>
No. CCCLII.		
A Fine <i>sur concessit</i> , by a man and his wife passing an Estate for years in Land the inheritance of the husband (with variations).....	516	<i>Sur concessit.</i>

FRIENDLY SOCIETIES.

See *post.* Vol. III. "SOCIETIES."

CONTENTS.

GIFT.

	PAGE
GIFT.	
No. CCCLIII.	
<i>Benefice.</i> A Gift of a Benefice or Living.....	518
No. CCCLIV.	
<i>Land.</i> A Deed of Gift of Land (by Deed-Poll).....	520
No. CCCLV.	
<i>Personalty.</i> A Deed of Gift of Leasehold and <i>Personal</i> Property (with variations)	522
No. CCCLVI.	
<i>Charity.</i> *A Deed of Gift for the Establishment or Endowment of a <i>Charity.</i>	526
Rider A.	
Variation where a Rent-charge is created for the preceding purposes.	531
Rider B.	
Variations where the Trusts are for the support of a Religious Sect...	532

GRANT.

GRANT.	
No. CCCLVII.	
<i>Land.</i> *A Grant of Crown Lands for the erecting a Church, &c. under 3 Geo. IV.....	535
No. CCCLVIII.	
<i>Glebe or Tithes.</i> *A Deed of Grant of Glebe Lands or Tithes by way of Sale, for the Purchase of other Lands under 17 Geo. III.....	537

CONTENTS.

	PAGE	
No. CCCLIX.		GRANT.
*Grant of Lands by Commissioners or Trustees of Turnpike-Roads under 4 Geo. IV. c. 95.....	539	<i>Lands.</i>

No. CCCLX.		
*Grant by way of Security for Money borrowed under 3 Geo. IV. c. 126.....	540	<i>Tolls.</i>

GUARANTEE.

No. CCCLXI.		GUARANTEE.
*A Guarantee for Payment of Monies to be advanced or of Goods.....	542	<i>Letter of Credit.</i>

HYPOTHECATION.

See also *ante*, "BILL OF SALE."

No. CCCLXII.		HYPOTHECATION.
Hypothecation of a Ship and Cargo.....	544	<i>Ship.</i>
No. CCCLXIII.		
*A Hypothecation by way of a Bill of Sale and Assignment of Ship and Cargo for securing money lent.....	546	<i>Ship.</i>

CONTENTS.

INDEMNITY.

See also *ante*, "BOND" and "COVENANTS."

		PAGE
INDEMNITY.	No. CCCLXIV.	
<i>Incumbrances.</i>	Declaration of Trust of Purchase Money invested in the Funds to Indemnify a Purchaser against <i>Incumbrances</i> (with variations).....	552
	No. CCCLXV.	
<i>Breach of Trust.</i>	*A Deed of Indemnity to a principal against a <i>Breach of Trust</i> by a Clerk, Agent or other subordinate officer, by Conveyance of a Freehold Estate.....	559
	No. CCCLXVI.	
<i>Judgment.</i>	*A Deed of Indemnity against a <i>Judgment</i> , by Declaration of Trust of Purchase Money on Sale of Estates by Trustees for Payment of Debts, &c.....	563
	No. CCCLXVII.	
<i>Legacies.</i>	*A Deed of Indemnity against <i>Legacies</i> or Portions by Investment of Purchase Money in Bank Annuities (with variations).....	566
	No. CCCLXVIII.	
<i>Rent.</i>	A Deed of Covenant by the Assignee of Leasehold Premises to Indemnify the Assignor against Payment of <i>Rent</i> and Performance of Covenants in the Lease.....	569
	No. CCCLXIX.	
<i>Rent-Charge.</i>	A Deed of Indemnity against a <i>Rent-charge</i> or other Incumbrance, by covenant and Power to Distrain (with variations).....	573
	No. CCCLXX.	
<i>Rent-Charge.</i>	A Deed of Indemnity against a <i>Rent-charge</i> or other Incumbrance by Demise of Freehold Lands to a Trustee (with variations).....	577
	Rider A.	
<i>Rent-Charge.</i>	*Variation where conciseness is desirable.....	586
	Rider B.	
<i>Rent-Charge.</i>	*Variations where the Fee is conveyed as an Indemnity.....	587

CONTENTS.

No. CCCLXXI.	PAGE	INDEMNITY.
*Grant of a perpetual <i>Rent-charge</i> or Fee-farm Rent out of Premises, to Indemnify other Premises conveyed to a Purchaser or Mortgagee against a like Rent-charge issuing thereupon.....	589	<i>Rent-Charge.</i>
No. CCCLXXII.		
*Deed of Indemnity to a <i>Surety</i> for an Annuitant, by Declaration of Trust of the Premises chargeable with the Annuity.....	594	<i>Surety.</i>
No. CCCLXXIII.		
*A Deed of Indemnity against <i>Tithes</i> by Investment of part of Purchase Money in the Funds.....	596	<i>Tithes.</i>

INSOLVENCY.

See *post*. Vol. III., at the end.

JOINTURE.

See *ante*, "CHARGE" and "COVENANT."

LETTERS OF ATTORNEY.

See *ante*, Vol. I. "APPOINTMENT."

LICENCE.

No. CCCLXXIV.		
A Licence from a Lessor to his Lessee to <i>Assign</i> or Underlet.....	601	<i>LICENCE.</i> <i>To assign.</i>
No. CCCLXXV.		
A Licence by the Lord to a Copyholder to <i>Demise</i> Copyhold Premises	603	<i>To demise.</i>
No. CCCLXXVI.		
A Letter of Licence from a <i>Creditor</i> to a <i>Debtor</i>	605	<i>Creditor to Debtor.</i>

CONTENTS.

LICENCE.	No. CCCLXXVII.	PAGE
<i>By Patentee.</i>	A Licence by a <i>Patentee</i> by Deed-Poll to make and vend Patent Goods; &c.....	607
	No. CCCLXXVIII.	
<i>By Patentee.</i>	*A Licence from a <i>Patentee</i> or his Assigns by Indenture to use a Patent Machine and make and sell Patent Goods, &c.....	608
	No. CCCLXXIX.	
<i>Fell Timber.</i>	A Licence from the Lord to a Copyhold Tenant to <i>fell Timber</i>	611
	No. CCCLXXX.	
<i>To Trade.</i>	A Licence to exercise a <i>Trade</i> in waiver of a restriction contained in a Lease or other Instrument.....	613

LIVING.

See *post.* Vol. III. "NOMINATION" and "PRESENTATION."

LIMITED ADMINISTRATION.

LIMITED ADMINISTRATION.	No. CCCLXXXI.	
<i>Outstanding Term.</i>	A Limited Administration to an <i>outstanding Term</i>	614

MEMORIALS.

MEMORIAL.	No. CCCLXXXII.	
<i>Annuity to be registered.</i>	A Memorial, to be <i>Registered</i> , of the Grant of an <i>Annuity</i>	617
	No. CCCLXXXIII.	
<i>Annuity to be enrolled.</i>	A Memorial of an <i>Annuity</i> to be <i>Enrolled</i> , pursuant to Act of 53 Geo. 3. cap. 141.....	618

CONTENTS.

No. CCCLXXXIV.

	PAGE	MEMORIAL.
A Memorial of an <i>Appointment</i> under a power contained in a Marriage Settlement or Will.....	620	<i>Appointment.</i>

No. CCCLXXXV.

A Memorial of an absolute <i>Assignment</i> of Leaseholds (with variations)	621	<i>Assignment.</i>
---	-----	--------------------

No. CCCLXXXVI.

A Memorial of an <i>Assignment</i> of an outstanding <i>Term to attend</i> the Inheritance	623	<i>Assignment.</i>
--	-----	--------------------

No. CCCLXXXVII.

A Memorial to be registered of a <i>Bargain and Sale</i> enrolled, to accompany a Conveyance by Lease and Release.....	624	<i>Bargain and Sale.</i>
--	-----	--------------------------

No. CCCLXXXVIII.

A Memorial of a <i>Further Charge</i>	626	<i>Further Charge.</i>
---	-----	------------------------

No. CCCLXXXIX.

*A Memorial for the registering of a <i>Charitable Donation</i>	627	<i>Charity.</i>
---	-----	-----------------

No. CCCXC.

*A Memorial of a <i>Charity</i> given to a Parish.....	629	<i>Charity.</i>
--	-----	-----------------

No. CCCXCI.

*A Memorial to the Bank of England by a Foreigner requesting the <i>Discount</i> of Bills	631	<i>Discount.</i>
---	-----	------------------

No. CCCXCII.

A Memorial of an <i>Exchange</i> at Common Law (with variations).....	633	<i>Exchange.</i>
---	-----	------------------

No. CCCXCIII.

A Memorial of a <i>Judgment</i>	634	<i>Judgment.</i>
---------------------------------------	-----	------------------

No. CCCXCIV.

Memorial of a <i>Lease</i> for Years (with variations).....	636	<i>Lease.</i>
---	-----	---------------

CONTENTS.

		PAGE
MEMORIAL	No. CCCXCV.	
<i>Lease and Re- lease.</i>	A Memorial of a <i>Conveyance</i> by Lease and Release (with variations).	637
	No. CCCXCVI.	
<i>Statute.</i>	A Memorial of a <i>Statute</i> (with variations).....	639
	No. CCCXCVII.	
<i>Will.</i>	A Memorial of a <i>Will</i>	642

. If any Precedent sought for be not found under the expected head in the TABLE OF CONTENTS, reference should be made to the INDEX.

MODERN PRECEDENTS

IN

CONVEYANCING.

CLASS IX.

MISCELLANIES.

*BANKRUPTCY.

In the preceding volumes of this work (1), various precedents were given of conveyances and other assurances from Commissioners of Bankrupts and their assignees of the real and personal estates of bankrupts, with annotations subjoined to such precedents founded upon the Bankrupt Laws as they stood under the then subsisting statutes. But all of those statutes being now repealed, and the laws relative to bankrupts' estates in many respects altered by the late act of 6 Geo. 4. c. 16. it seems proper to introduce in this class of MISCELLANIES such of the clauses in that act as have occasioned those alterations,—and those alone might be deemed sufficient—but as other parts of the act have been referred to prospectively in the DISSERTATION relative to *Debtors and Creditors*, and will be again adverted to in the subsequent pages, I have thought it better to give a summary of the whole act, noticing, however, those parts of it more fully which have a more particular relation to the present work.

BANKRUPT.
(6 Geo. 4. c. 16.)

This act of 6 Geo. 4. after reciting that it was “expedient to amend the laws relating to bankrupts, and to simplify the language thereof, and to consolidate the same so amended and simplified in one act, and to make other provisions respecting bankrupts,” repeals

§ 1. All former acts and legislative enactments relative to bankrupts and their creditors or effects, and declares,

(1) See MODERN PRECEDENTS, Vols. II. III. and VI.

BANKRUPT.

(6 Geo. 4. c. 16.)

What persons
shall be deemed
traders.

§ 2. That all bankers, brokers, and persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody, and persons insuring ships or their freight, or other matters, against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or by buying or letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt: Provided that no farmer, grazier, common labourer, or workman for hire, receiver general of the taxes, or member of or subscriber to any incorporated, commercial, or trading companies established by charter or act of parliament, shall be deemed as such a trader liable by virtue of this act to become bankrupt.

What persons
not.

What conveyances and other acts shall constitute bankruptcy.

§ 3. That if any such trader shall depart this realm, or being out of this realm shall remain abroad, or depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, money, or chattels to be attached, sequestered, or taken in execution, *or make or cause to be made, either within this realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make or cause to be made any fraudulent surrender of any of his copyhold lands or tenements, or make or cause to be made any fraudulent gift, delivery, or transfer of any of his goods or chattels; every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy.*

What conveyances, &c. not an act of bankruptcy.

§ 4. But that where any such trader shall effect, execute any conveyance or assignment, by deed, to a trustee or trustees, of all his estate and effects for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy; unless a commission issue against such trader within six calendar months from the execution thereof by such trader; *provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in London or within forty miles thereof, in the London Gazette, and also in two London daily newspapers; and in case such trader does not reside within forty miles of London, then in*

Notice thereof in the Gazette and Newspapers.

the *London Gazette*, and also in one *London* daily newspaper and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee and of such attorney or solicitor.

BANKRUPT.

(8 Geo. 4. c. 16.)

§ 5. That if any such trader, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall, upon such or any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy; or if any such trader, having been arrested; committed, or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment, or detention.

Lying in prison, and escaping out of prison.

§ 6. That if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said secretary of bankrupts or his deputy shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the *London Gazette* to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the *London Gazette* within eight days after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after insertion of such advertisement, in case such commission is to be executed in *London*, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and the gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

Declaration of insolvency left at the bankrupt office, an act of bankruptcy.

To be gazetted.

Issuing commission.

Striking docket.

§ 7. That no commission under which the adjudication shall be grounded on the act of bankruptcy, being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.

Concerted bankruptcy not to invalidate commission.

§ 8. That if any such trader, liable by virtue of this act to become bankrupt, shall, after a docket struck against him, pay to the person or persons who struck the same, or any of them, money, or give or deliver

Trader compounding, &c. with petitioning creditor an act of bankruptcy.

BANKRUPT.

(6 Geo. 4. c. 16.)

Penalty on creditor so compounding.

Privilege of parliament no protection.

What shall be acts of bankruptcy by trader having privilege of parliament.

to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debts than the other creditors, such payment, gift, delivery, satisfaction, or security shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck as aforesaid, the Lord Chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may issue, and such commission may be supported either by proof of such last-mentioned or of any other act of bankruptcy; and every person so receiving such money, gift, delivery, satisfaction, or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security as aforesaid, or the full value thereof, to such person or persons as the commissioners acting under such original commission, or any new commission, shall appoint for the benefit of the creditors of such bankrupt.

§ 9. That if any such trader having privilege of parliament shall commit any of the aforesaid acts of bankruptcy, a commission of bankrupt may issue against him, and the commissioners and all other persons acting under such commission, may proceed thereon in like manner as against other bankrupts; but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony.

§ 10. That if any creditor or creditors of any such trader having privilege of parliament to such amount as is hereinafter declared requisite to support a commission, shall file an affidavit or affidavits in any court of Record at *Westminster*, that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall sue out of the same court a summons, or an original bill and summons against such trader, and serve him with a copy of such summons, if such trader shall not, within one calendar month after personal service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons cause an appearance or appearances to be entered to such action or actions, in the proper court or courts in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons, and any creditor or creditors of such trader to such amount as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

§ 11. That if any decree or order shall have been pronounced in any cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of parliament, ordering such trader to pay any sum of money, and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant to such decree or order, may apply to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof, and any such creditor or creditors as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

BANKRUPT.

(6 Geo. 4. c. 16.)

Same subject.

§ 12. That the Lord Chancellor shall have power, upon petition made to him in writing against any trader having committed any act of bankruptcy by any creditor or creditors of such trader, by commission under the Great Seal, to appoint such persons as to him shall seem fit, who shall by virtue of this act and of such commission, have full power and authority to take such order and direction, with the body of such bankrupt, as hereinafter mentioned, *as also with all his lands, tenements, and hereditaments, both within this realm and abroad, as well copy or customaryhold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements, and hereditaments as such bankrupt may lawfully depart with all, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize, and debts, wheresoever they may be found or known, and to make sale thereof in manner hereinafter mentioned, or otherwise order the same for satisfaction and payment of the creditors of the said bankrupt.*

Power to the Lord Chancellor to issue a commission on petition.

§ 13. That the petitioning creditor shall, before any commission be granted, make an affidavit in writing before a Master Ordinary or Extraordinary in Chancery (which shall be filed with the proper officer) of the truth of such his or their respective debt or debts; and shall likewise give bond to the Lord Chancellor in the penalty of two hundred pounds to be conditioned for proving his or their debt or debts, as well before the commissioners as upon any trial at law, in case the due issuing forth of the commission be contested, and also for proving the party to have committed an act of bankruptcy at the time of taking out such commission, and to proceed on such commission; but if such debt or debts shall not be really due, or if after such commission taken out it be not proved that the party had committed an act of bankruptcy at the time of the issuing of the commission, and it shall also appear that such commission was taken out fraudulently or maliciously, the Lord Chan-

Petitioning creditor to make oath of debt, and give bond which may be assigned.

BANKRUPT.

(6 Geo. 4. c. 16.)

cellor shall and may, upon petition of the party or parties against whom the commission was so taken out, examine into the same, and order satisfaction to be made to him or them for the damages by him or them sustained, and for the better recovery thereof, may assign such bond or bonds to the party or parties so petitioning, who may sue for the same in his and their name or names.

Costs of commission until choice of assignees.

§ 14. That the petitioning creditor or creditors shall, at his or their own costs, sue forth and prosecute the commission until the choice of assignees; and the commissioners shall, at the meeting for such choice, ascertain such costs, and by writing under their hands direct the assignees (who are hereby thereto required) to re-imburse such petitioning creditor or creditors such costs out of the first money that shall be got in under the commission; and all bills of fees or disbursements of any solicitor or attorney employed under any commission for business done after the choice of assignees, shall be settled by the commissioners, except that so much of such bills as contain any charge respecting any action at law, or suit in equity, shall be settled by the proper officer of the court in which such business shall have been transacted, and the same, so settled, shall be paid by the assignees to such solicitor or attorney: Provided that any creditor who shall have proved to the amount of twenty pounds or upwards, if he be dissatisfied with such settlement by the commissioners, may have any such costs and bills settled by a Master in Chancery, who shall receive for such settlement, and the certificate thereof, twenty shillings, and no more.

Costs to be taxed by commissioners,

or by a master.

Amount, &c. of petitioning creditor's debt.

§ 15. That no such commission shall be issued unless the single debt of such creditor, or of two or more persons being partners, petitioning for the same, shall amount to one hundred pounds or upwards, or unless the debt of two creditors so petitioning shall amount to one hundred and fifty pounds or upwards, or unless the debt of three or more creditors so petitioning shall amount to two hundred pounds or upwards; and that every person who has given credit to any trader upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have any security in writing or otherwise for such sum or not.

Joint Commissions.

§ 16. That any creditor or creditors whose debt or debts is or are sufficient to entitle him or them to petition for a commission against all the partners of any firm, may petition for a commission against one or more partners of such firm, and every commission issued upon such petition shall be valid, although it does not include all the partners of the firm, and in every commission against two or more persons it shall be lawful for the Lord Chancellor to supersede such commission as to one or more of such persons, and the validity of such commission shall not be thereby affected as to any person as to whom such commission is not ordered to be superseded, nor shall any such person's certificate be thereby affected.

§ 17. That if after a commission issued against two or more members of a firm any other commission or commissions shall be issued against any other member or members of such firm, such other commission or commissions shall be directed to the commissioners to whom the first commission was directed, and immediately after the adjudication under such other commission or commissions *the commissioners shall convey and assign all the estate real and personal of such bankrupt or bankrupts to the assignees chosen in the first commission*; and after such conveyance all separate proceedings under such other commission or commissions shall be stayed, and such commission or commissions shall, without affecting the validity of the first commission, be annexed to and form part of the same; provided that the Lord Chancellor may direct that such other commission or commissions be issued to any other commissioners, or that such other commission or commissions shall proceed either separately or in conjunction with the first commission.

BANKRUPT.
(6 Geo. 4. c. 16.)

As to the issuing of a second or other commission.

§ 18. That if after adjudication the debt or debts of the petitioning creditor or creditors, or any of them, be found insufficient to support a commission, it shall be lawful for the Lord Chancellor, upon the application of any other creditor or creditors, having proved any debt or debts sufficient to support a commission, provided such debt or debts has or have been incurred not anterior to the debt or debts of the petitioning creditor or creditors, to order the said commission to be proceeded in, and it shall by such order be deemed valid.

As to debt being insufficient to support commission.

§ 19. That no commission shall be deemed invalid by reason of any act or acts of bankruptcy prior to the debt or debts of the petitioning creditor or creditors, or any of them, provided there be a sufficient act of bankruptcy subsequent to such debt or debts.

Prior act of bankruptcy not to invalidate commission.

§ 20. That it shall be lawful for the Lord Chancellor to direct an auxiliary commission to issue for proof of debts under twenty pounds, and for the examination of witnesses on oath, or for either of such purposes; and the commissioners in every such commission issued for the examination of witnesses shall possess the same powers to compel the attendance of and to examine witnesses, and to enforce both obedience to such examination, and the production of books, deeds, papers, writings, and other documents, as are possessed by the commissioners in any original commission: Provided always, that all such examinations of witnesses under such commissions shall be taken down in writing, and shall be annexed to and form part of the original commission.

Auxiliary commissions.

§ 21. Gives the form of commissioners' oath, and how to be administered.

§ 22. That the said commissioners shall receive and be paid the fee of twenty shillings each commissioner for every meeting, and the like sum for every deed of conveyance executed by them, and for the signature of the bankrupt's certificate; and where any commission shall be executed in the country, every commissioner, being a barrister at law,

Commissioners' fees.

BANKRUPT.

(6 Geo. 4. c. 16.)

shall receive a further fee of twenty shillings for each meeting ; and in case the usual place of residence of such commissioner, being a barrister, is distant seven miles or upwards from the place where such meetings are holden, and he shall travel such distance to any such meeting, he may receive a further sum of twenty shillings for every such meeting ; and every commissioner who shall receive from the creditors, or out of the estate of the bankrupt, any further sum than as aforesaid, or who shall eat or drink at the charge of the creditors, or out of the estate of the bankrupt, or order any such expence to be made, shall be disabled for ever from acting in such or any other commission.

In country commissions barristers to have preference.

§ 23. That at every meeting under any commission to be executed in the country, wherein any one or more of the commissioners named may be a barrister or barristers, such barrister or barristers, or as many of them as shall be willing to attend, not exceeding three at each meeting, shall be the acting commissioner or commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other commissioners in the said commission named.

Commissioners' power to summon persons to give evidence.

§ 24. That it shall be lawful for the commissioners, after they shall have taken such oath as aforesaid, by writing under their hands, to summon before them any person whom they shall believe capable of giving any information concerning the trading of or any act or acts of bankruptcy committed by the person or persons against whom such commission is issued, and also to require any person so summoned to produce any books, papers, deeds, and writings, and other documents in the custody, possession, or power of such person, which may appear to the said commissioners to be necessary to establish such trading or act or acts of bankruptcy ; and it shall be lawful for the said commissioners to examine any such person upon oath, by word of mouth, or interrogatories in writing, concerning the trade of or any act or acts of bankruptcy committed by the person or persons against whom such commission shall have issued ; and every such person so summoned shall incur such danger or penalty for not coming before the commissioners, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the said commissioners, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is hereby provided as to persons summoned after the adjudication of bankruptcy ; and the commissioners, upon proof made before them of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy of the person or persons against whom such commission is issued, shall thereupon adjudge such person or persons bankrupt.

Adjudication of bankruptcy.

Meetings of commissioners, and notice in Gazette.

§ 25. That the commissioners, after they have so adjudged as aforesaid shall forthwith cause notice of such adjudication to be given in the *London Gazette*, and shall thereby appoint three public meetings for the bankrupt to surrender and conform, the last of which meetings

shall be on the forty-second day hereby limited for such surrender.

BANKRUPT.

(6 Geo. 4. c. 16.)

§ 26. to § 44. &c. relate to the authority of the commissioners and their messengers in granting and executing warrants, &c. and protecting them against actions in the performance of their duties.

Commissioners may appoint assignees until others are chosen by creditors.

§ 45. declares, that it shall be lawful for the commissioners as often as they shall think fit, by writing under their hands, to appoint one or more person or persons an assignee or assignees of the bankrupt's real and personal estate, or of any part thereof, which assignee or assignees shall or may be removed at the meeting of the creditors for the choice of assignees, if they shall think fit; and such assignee or assignees so removed shall deliver up and assign all the estate of the bankrupt come to his or their possession to the assignees so chosen as hereinafter mentioned, and all the estate of the bankrupt, which shall be so delivered up and assigned, shall be as effectually and legally vested in the assignees so chosen as aforesaid, as if the first assignment had been made to them by the commissioners; and if such first assignee or assignees shall not within ten days after notice given of the said choice of assignees, and of their consent to accept such assignment, signified to the first assignee or assignees by writing under their hands, make such assignment and delivery as aforesaid, every such assignee shall forfeit two hundred pounds.

Penalty on first assignee for not delivering the effects to the new ones, £200.

§ 46. That at the three several meetings so appointed by the commissioners as aforesaid, and at every other meeting by them appointed for proof of debts (whereof, and of the purport whereof, ten days' notice shall have been given in the *London Gazette*), every creditor of the bankrupt may prove his debt by his own oath; and all bodies politic and public companies incorporated or authorized to sue or bring actions, either by charter or act of Parliament, may prove by an agent, provided such agent shall in his deposition swear that he is such agent as aforesaid, and that he is authorized to make such proof; and if any creditor shall live remote from the place of the meeting of the commissioners, he may prove by affidavit, sworn before a Master in Chancery, ordinary or extraordinary; or if such creditor shall live out of *England*, by affidavit sworn before a magistrate where such creditor shall be residing, and attested by a Notary Public, *British* Minister, or Consul, and no creditor shall pay any contribution on account of any such debt.

How debts to be proved.

By corporations, &c.

By creditor remote or abroad.

§ 47. That every person with whom any bankrupt shall have really and *bonâ fide* contracted any debt or demand before the issuing the commission against him, shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, and be a creditor under such commission, as if no such act of bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any act of bankruptcy by such bankrupt committed.

Bonâ fide creditors may prove notwithstanding any secret bankruptcy.

BANKRUPT.

(6 Geo. 4. c. 16.)

Six months' wages of servants or clerks to be paid.

Bankruptcy discharges apprentices, and part of premium to be paid.

Mutual debts and credits may be set off, notwithstanding a secret act of bankruptcy.

Debts not payable may be proved, abating discount.

§ 48. That when any bankrupt shall have been indebted, at the time of issuing the commission against him, to any servant or clerk of such bankrupt, in respect of the wages or salary of such servant or clerk, it shall be lawful for the commissioners, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding six months' wages or salary, to be paid to such servant or clerk out of the estate of such bankrupt; and such servant or clerk shall be at liberty to prove under the commission for any sum exceeding such last-mentioned amount.

§ 49. That where any person shall be an apprentice to a bankrupt at the time of issuing of the commission against him, the issuing of such commission shall be and enure as a complete discharge of the indenture or indentures whereby such apprentice was bound to such bankrupt; and if any sums shall have been really and *bonâ fide* paid, by or on behalf of such apprentice to the bankrupt, as an apprentice fee, it shall be lawful for the commissioners, upon proof thereof, to order any sum to be paid to or for the use of such apprentice which they shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice to the bankrupt, and to the time during which such apprentice shall have resided with the bankrupt previous to the issuing of the commission.

§ 50. That where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the commissioners shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit given to or the debt contracted by him, and what shall appear due on either side on the balance of such account and no more, shall be claimed or paid on either side respectively, and every debt or demand hereby made proveable against the estate of the bankrupt, may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of bankruptcy by such bankrupt committed.

§ 51. That any person who shall have given credit to the bankrupt upon valuable consideration, for any money or other matter or thing, whatsoever, which shall not have become payable when such bankrupt committed an act of bankruptcy, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security, as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five *per cent.*, to be computed from the declaration of a dividend to the time such debt would have become payable, according to the terms upon which it was contracted.

§ 52. That any person who at the issuing the commission shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt (although he may have paid the same after the commission issued) if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said commission which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved under the commission, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid, after an act of bankruptcy committed by such bankrupt; provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed.

BANKRUPT.

(6 Geo. 4. c. 16.)

Sureties, &c.
may prove debts
paid by them.

§ 53. That the obligee in any bottomry or respondentia bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors as if the loss or contingency had happened before the issuing the commission against such obligor or insurer; and that the person effecting any policy of insurance upon ships or goods with any person, as a subscriber or underwriter, becoming bankrupt, shall be entitled to prove any loss to which such bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person or persons so interested is not or are not within the United Realm.

Obligee in bot-
tomry or respon-
dentia bonds, and
assured in poli-
cies may claim;
and prove after
loss.

Assurers may
prove.

§ 54. That any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the value of such annuity, which value the commissioners shall ascertain, regard being had to the original price given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the commission.

Annuity credi-
tor admitted to
prove.

§ 55. That it shall not be lawful for any person entitled to any annuity granted by any bankrupt, to sue any person who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the payment thereof; and if such surety after such proof pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to

Sureties for pay-
ment of annui-
ties how to
come in under
commission.

BANKRUPT.
(6 Geo. 4. c. 16.)

the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity, until such annuitant shall have paid or satisfied the amount so proved, with interest thereon at the rate of four *per cent. per annum*, from the time of notice of such proof, and of the amount thereof being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant or of such surety in respect of such annuity; provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved as aforesaid.

Debts contingent at the time of the bankruptcy, may be proved after happening of contingency.

§ 56. That if any bankrupt shall, before the issuing of the commission, have contracted any debt payable upon a contingency which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the commissioners to set a value upon such debt, and the commissioners are hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon; or if such value shall not be so ascertained before the contingency shall have happened, then such person may after such contingency shall have happened, prove in respect of such debt, and receive dividend with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice of any act of bankruptcy by such bankrupt committed.

Interest on promissory notes and bills of exchange proveable.

§ 57. That in all future commissions against any person or persons liable upon any bill of exchange or promissory note, whereupon interest is not reserved, overdue at the issuing the commission, the holder of such bill of exchange or promissory note shall be entitled to prove for interest upon the same, to be calculated by the commissioners to the date of the commission, at such rate as is allowed by the Court of King's Bench in actions upon such bills or notes.

§ 58. That plaintiff obtaining judgment, &c. shall be entitled to prove for costs, &c.

§ 59. That proving a debt by award under a commission shall be an election not to proceed against the bankrupt by action, but creditors having elected to come in under the commission, if it be afterwards superseded, are restored to their former rights.

§ 60. That commissioners may expunge proof of debts, and persons requiring investigation to sign undertaking for costs.

Assignees to be chosen at second meeting of commissioners.

§ 61. That at the second meeting appointed by the commissioners as aforesaid, or any adjournment thereof, assignees of the bankrupt's estate and effects shall be chosen; and all creditors who have proved

debts under the commission to the amount of ten pounds and upwards shall be entitled to vote in such choice ; and also any person authorized by letter of attorney from any such creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a Master in Chancery, ordinary or extraordinary, or by oath before the commissioners *vivâ voce*, and in case of creditors residing out of England, by oath before a magistrate where the party shall be residing, duly attested by a Notary Public, *British Minister* or Consul, and the choice shall be made by the major part in value of the creditors so entitled to vote : provided that the commissioners shall have power to reject any person so chosen who shall appear to them unfit to be such assignee as aforesaid, and upon such rejection a new choice of another assignee or assignees shall be made as aforesaid.

BANKRUPT.

(6 Geo. 4. c. 16.)

Commissioners may reject those chosen.

§ 62. That in all commissions against one or more of the partners of a firm, any creditor to whom the bankrupt or bankrupts is or are indebted, jointly with the other partner or partners of the said firm, or any of them, shall be entitled to prove his debt under such commission for the purpose only of voting in the choice of assignees under such commission, and of assenting to or dissenting from the certificate of such bankrupt or bankrupts, or of either of such purposes ; but such creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts until all the separate creditors shall have received the full amount of their respective debts, unless such creditor shall be a petitioning creditor in a commission against one member of a firm.

Joint creditor may prove under separate commission for voting for assignees ; but not to receive dividend, unless, &c.

§ 63. That the commissioners shall assign to the assignees, for the benefit of the creditors of the bankrupt, all the present and future personal estate of such bankrupt wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed or come to him, before he shall have obtained his certificate ; and the commissioners shall also assign as aforesaid all debts due or to be due to the bankrupt wheresoever the same may be found or known, and such assignment shall vest the property, right, and interest in such debts in such assignees, as fully as if the assurance whereby they are secured had been made to such assignees ; and after such assignment, neither the bankrupt nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt by any person according to the custom of the city of London or otherwise, but such assignees shall have like remedy to recover the same in their own names as the bankrupt himself might have had if he had not been adjudged bankrupt.

Commissioners to convey the personal estate to the assignees, and debts due to the bankrupt.

§ 64. That the commissioners shall, by deed indented and enrolled in any of His Majesty's Courts of Record, convey to the said assignees, for the benefit of the creditors as aforesaid, all lands, tenements, and hereditaments, except copy or customaryhold in England, Scotland, Ireland,

Commissioners to convey bankrupt's real estate to assignees.

BANKRUPT.

(6 Geo. 4. c. 16.)

Proviso as to registration of conveyance of colonial property.

Commissioners may make sales of hereditaments whereof the bankrupt is seised of any estate tail, &c.

Any conveyance or assignment may be vacated by Chancellor.

New assignment by commission to vest the personal estate in new assignees.

or in any of the dominions, plantations, or colonies belonging to His Majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements, or hereditaments, and of which he might, according to the laws of the several countries, dominions, plantations, or colonies have disposed, and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate, and all deeds, papers, and writings respecting the same, and every such deed shall be valid against the bankrupt, and against all persons claiming under him: provided, that where according to the laws of any such plantation or colony such deed would require registration, enrolment, or recording, the same shall be so registered, enrolled, or recorded, according to the laws of such plantation or colony, and no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, enrolment, or recording, without notice that the commission has issued.

§ 65. *That the commissioners shall by deed, indented and enrolled as aforesaid, make sale for the benefit of the creditors as aforesaid of any lands, tenements, and hereditaments, situate either in England or Ireland, whereof the bankrupt is seised of any estate tail in possession, reversion, or remainder, and whereof no reversion or remainder is in the Crown, the gift or provision of the Crown, and every such deed shall be good against the said bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and against all persons whom the said bankrupt by fine, common recovery, or any other means, might cut off or debar from any remainder, reversion, or other interest, in or out of any of the said lands, tenements, and hereditaments.*

§ 66. *That the Lord Chancellor may, upon petition, order any conveyance or assignment either of the real or personal estate of the bankrupt, made either to assignees appointed by the commissioners or chosen by the creditors, and any enrolment thereof, to be vacated, provided that no title of any purchaser under any conveyance prior to such order be thereby affected; and that no estate previously barred be thereby revived; and may order the commissioners to execute a new assignment or assignments of the debts and effects unreceived and not disposed of by the then assignee or assignees to any other person or persons to be chosen by the creditors as aforesaid, or to execute a new conveyance of the real estate unsold or not conveyed to such person or persons, and in such manner as the Lord Chancellor shall direct; and if such new assignment shall be ordered, the debts and personal estate of the bankrupt shall be thereby vested in such new assignees, and it shall be lawful for them to sue for the same, and to discharge any action or suit, or to give any acquittance of such debts, as effectually as the former assignees might have done; and the commissioners shall, in the two London Gazettes next after the removal of such assignee or assignees, and such new*

appointment as aforesaid, cause advertisements to be inserted giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed; and *if such new conveyance as aforesaid shall be ordered as aforesaid, it shall be valid without any conveyance from any former assignee or assignees, or his or their heirs or assigns*, provided that the order so made for vacating any bargain and sale be enrolled; and any bargain and sale to be executed in pursuance thereof shall be enrolled in the same court as the first bargain and sale of the same estate was enrolled.

§ 67. That suits shall not abate by death or removal of assignees.

§ 68. That the commissioners shall have power, by deed indented and enrolled in any of His Majesty's Courts of Record, to make sale, for the benefit of the creditors, of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto.

§ 69. That every person, to whom any sale of copyhold or customary lands or tenements shall be made by the commissioners, shall, before he enter into or take any profit of the same, agree and compound with the Lords of the Manors of whom the same shall be holden, for fines, dues, and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs, and services, and shall admit him tenant of the same.

§ 70. That if any bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money, or other performance, according to such condition, as fully as the bankrupt might have done, and after such tender, payment, or performance, may sell and dispose of such real or personal estate for the benefit of the creditors as aforesaid.

§ 71. That if any real or personal estate or debts of any bankrupt be extended after he shall have become bankrupt, by any person, under pretence of his being an accountant of or debtor to the King, the commissioners may examine upon oath, whether the said debt was due to such debtor or accountant upon any contract originally made between such accountant and the bankrupt, and if such contract was originally made with any other person than the said debtor or accountant,

BANKRUPT.

(6 Geo. 4. c. 16.)

New conveyance of real estate by commission shall pass the estate to new assignees.

Commissioners may make sale of copyhold lands.

Vendees of copyhold lands shall compound with the lord for their fines.

Conditional estates granted by the bankrupt may be redeemed.

Commissioners may proceed when the bankrupt by fraud makes himself accountant to the King.

BANKRUPT.**(6 Geo. 4. c. 16.)**

Goods in the possession, &c. of bankrupt may be assigned by commissioners; but not vessels, &c. duly registered.

Conveyances, &c. by bankrupt of lands or goods, &c. into other names, void.

Distress for rent not available for more than one year's rent.

Bankrupt leases not to be liable for rent or covenants after commission.

or in trust for any other person or persons, the commissioners may sell and dispose of such real and personal estate or debts for the benefit of the creditors under the commission, and such sale shall be valid against the said extent, and all persons claiming under it; and any person to whom the said real and personal estate or debts shall be bargained, sold, granted, or assigned by the commissioners, shall have and may recover the same against any person who shall detain the same.

§ 72. That if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels, whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the commissioners shall have power to sell and dispose of the same for the benefit of the creditors under the commission: provided, that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an act of Parliament made in the fourth year of His present Majesty, intituled "An Act for the registering of Vessels."

§ 73. That if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other sureties, or have transferred his debts to any other person or persons, or in any other person's name, the commissioners shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid against the bankrupt, and such children and persons as aforesaid, and against all persons claiming under him.

§ 74. That no distress for rent made and levied after an act of bankruptcy upon the goods or effects of any bankrupt (whether before or after the issuing of the commission), shall be available for more than one year's rent, accrued prior to the date of the commission, but the landlord or party to whom the rent shall be due, shall be allowed to come in as a creditor under the commission for the overplus of the rent due, and for which the distress shall not be available.

§ 75. That any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or to be sued in respect of any subsequent nonobservance or nonperformance of the conditions, covenants, or agreements therein contained; and if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor or such person agreeing to grant a lease, within fourteen days after he shall have had notice that the

assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply by petition to the Lord Chancellor, who may order them so to elect and to deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit.

§ 76. That if any bankrupt shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees of such bankrupt shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, shall be entitled to apply by petition to the Lord Chancellor, who may thereupon order them to deliver up the said agreement, and the possession of the premises, to the vendor or person claiming under him, or may make such other order therein as he shall think fit.

§ 77. That all powers vested in any bankrupt which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same.

§ 78. That it shall be lawful for the Lord Chancellor upon the petition of the assignees or of any purchaser from them, of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity, to order the bankrupt to join in any conveyance of such estate, or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt and all persons claiming under him shall be stopped from objecting to the validity of such conveyance; and all estate, right, or title which such bankrupt had therein, shall be as effectually barred by such order as if such conveyance had been executed by him.

§ 79. That if any bankrupt shall as trustee be seised, possessed of or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any public company, either in *England, Scotland, or Ireland*, it shall be lawful for the Lord Chancellor, on the petition of the person or persons entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, stock, funds, or annuities to such person or per-

BANKRUPT.

(6 Geo. 4. c. 16.)

Assignees to elect to abide by or decline agreement by bankrupt for purchase of estate.

Assignees may execute powers vested in bankrupt.

Chancellor may order bankrupts to join in conveyances.

Trustees becoming bankrupts chancellor may be ordered to convey or assign to other trustees.

BANKRUPT.

(6 Geo. 4. c. 16).

sons as the Lord Chancellor shall think fit, upon the same trusts as the said estate, interest, stock, funds, or annuities were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect; and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof, as the Lord Chancellor shall direct.

Stock when bankrupt's entitled to be transferred to assignees.

§ 80. That if any such bankrupt shall have any government stock, funds, or annuities, or any of the stock of any public company, either in *England, Scotland, or Ireland*, standing in his name in his own right, it shall be lawful for the commissioners, by writing under their hands, to order all persons whose act or consent is thereto necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order.

Conveyances, contracts, executions, &c. two months before the commission, without notice, &c. valid.

§ 81. That all conveyances by, and all contracts and other dealings and transactions by and with any bankrupt, *bonâ fide* made and entered into more than two calendar months before the date and issuing of the commission against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid, notwithstanding any prior act of bankruptcy by him committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such conveyance, contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed: provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing, or transaction, execution or attachment, shall be valid, unless made, entered into, executed, or levied more than two calendar months before the issuing the first commission.

The two months to be reckoned from the issuing of a superseded commission.

Payments made by bankrupt or received by creditor without notice of bankruptcy, valid.

§ 82. That all payments really and *bonâ fide* made, or which shall hereafter be made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt (such payment not being a fraudulent preference of such creditor), shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and all payments really and *bonâ fide* made, or which shall hereafter be made to any bankrupt before the date and issuing of the commission against such bankrupt, shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and such creditor shall not be liable to refund the same to the assignees of such bankrupt, provided

the person so dealing with the said bankrupt had not, at the time of such payment by or to such bankrupt, notice of any act of bankruptcy by such bankrupt committed.

BANKRUPT.
(6 Geo. 4. c. 16.)

§ 83. That the issuing of a commission shall be deemed notice of a prior act of bankruptcy (if an act of bankruptcy had been actually committed before the issuing the commission), if the adjudication of the person or persons against whom such commission has issued shall have been notified in the *London Gazette*, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same.

What shall be construed notice.

§ 84. That no person or body corporate, or public company, having in his or their possession or custody any money, goods, wares, merchandizes, or effects belonging to any bankrupt, shall be endangered by reason of the payment or delivery thereof to the bankrupt or his order; provided such person or company had not, at the time of such delivery or payment, notice that such bankrupt had committed an act of bankruptcy.

Persons not to be prejudiced for delivery of goods without notice.

§ 85. That if any accredited agent of any body corporate or public company shall have had notice of any act of bankruptcy, such body corporate or company shall be hereby deemed to have had such notice.

Notice to agents of bodies politic, &c.

§ 86. That no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy.

Bonâ fide purchases not impeachable after 12 months.

§ 87. That no title to any real or personal estate sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same, within twelve calendar months from the issuing thereof.

Property sold under commission not to be impeached after 12 months.

§ 88. That the assignees, with the consent of the major part in value of creditors who shall have proved under the commission, present at any meeting, whereof and of the purport whereof twenty-one days notice shall have been given in the *London Gazette*, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or may give time and take security for the payment of such debt, or may submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors; and the assignees are hereby indemnified for what they shall do according to the directions aforesaid,

Assignees, with consent of creditors, may compound debts,

BANKRUPT.

(6 Geo 4. c. 16.)

but meetings of
creditors for
consent, to be
attended by one-
third in value.

Assignees of
one or more of a
firm may use
names of part-
ners in suits.

and no suit in equity shall be commenced by the assignees without such consent as aforesaid; provided that if one third in value or upwards of such creditors shall not attend at any such meeting (whereof such notice shall have been given as aforesaid), the assignees shall have power, with the consent of the commissioners testified in writing under their hands, to do any of the matters aforesaid.

§ 89. That in any commission against any one or more member or members of a firm, the Lord Chancellor may, upon petition, authorize the assignees to commence or prosecute any action at law, or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and may obtain such judgment, decree, or order therein, as if such action or suit had been instituted with the consent of such partner or partners, and if such partner or partners shall execute any release of the debt or demand for which such action or suit is instituted, such release shall be void; provided that every such partner, if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit; and that it shall be lawful for the Lord Chancellor, upon the petition of such partner, to direct that he may receive so much of the proceeds of such action or suit as the Lord Chancellor shall think fit.

§ § 90, 91. Declare, that in actions, or suits, by or against any person acting under the commission, no proof shall be required at the trial of petitioning creditor's debt, trading, or act of bankruptcy, unless notice be given that those matters are to be disputed.

§ 92. That depositions shall be conclusive in actions or suits by assignees for any debt of the bankrupt, unless he dispute the commission, &c.

§ 93. That debtor to the bankrupt's estate may pay the debt into court when sued by the assignee.

§ 94. That if the commission be afterwards superseded, persons from whom the assignees have recovered, or *bonâ fide* paying the assignees, &c. shall be discharged from claims by the bankrupt.

§ 95. That the Chancellor may appoint office for registering proceedings in bankruptcy.

No commission,
conveyance, &c.
to be evidence
unless entered
of record.

§ 96. That in all commissions issued after this act shall have taken effect, no commission of bankruptcy, adjudication of bankruptcy by the commissioners, or assignment of the personal estate of the bankrupt, or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid; and the person so appointed to enter matters of record as aforesaid, shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, assignment, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of two shillings each, and for the

entry of every certificate of conformity, having the like certificate indorsed thereon, six shillings; and every such instrument shall be so entered of record upon the application of, or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the Lord Chancellor may, upon petition, direct any depositions, proceedings or other matter relating to commissions of bankruptcy, to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the Lord Chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid: Provided that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon, purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid.

BANKRUPT.

(6 Geo. 4. c. 16.)

Lord Chancellor may direct other matters to be entered.

Liberty to search.
Certificate of entry to be evidence.

§ 97. That in every action, suit, or issue, office copies of any original instrument or writing, filed in the office or officially in the possession of the Lord Chancellor's secretary of bankrupts, shall be evidence to be received of every such original instrument or writing respectively; and if any such original instrument or writing shall be produced on any trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary.

Where office copies evidence.

§ 98. That commissions, deeds, and other instruments relating to estates and effects of bankrupts shall be exempt from stamp duty; and that sales by auction shall be exempt from duty.

§ 99. That a false oath or affirmation shall be perjury.

§ 100. That all sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath hereby directed or authorized, may be sued for by the assignees in any of His Majesty's courts of record; and the money so recovered (the charges of suit being deducted) shall be divided among the creditors.

Forfeitures for perjury.

§ 101. That the assignees shall keep an account, wherein they shall enter all property of the bankrupt received by them, and all payments made by them on account of the bankrupt's estate, which account every creditor who shall have proved may inspect, at all seasonable times; and the commissioners may, at all times, by writing under their hands, summon the assignees before them, and require them to produce all books, papers, deeds, writings, and other documents relating to the Bankruptcy, in their possession.

Assignees directed to keep a book of accounts.

§ 102. That at the meeting of creditors for the choice of assignees, the major part in value of such creditors there present may direct how, and with whom, and where the money received from time to time out of the estate shall be paid in and remain until it be divided; and if such

Creditors to direct where the money received shall be paid and remain till dividend.

BANKRUPT.

(6 Geo 4. c. 16.)

Commissioners may direct such money to be vested in exchequer bills.

creditors shall not make such direction as aforesaid, the commissioners shall, immediately after such choice, and at the same meeting, make such direction; but no money shall be directed to be paid into the hands of any of the commissioners, or of the solicitor to the commission, or into any banking house, or other house of trade, in which any such commissioner, assignee, or solicitor is interested.

§ 103. That the commissioners may, as often as it shall appear to them expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of exchequer bills, for the benefit of the creditors, and may direct where and with whom such exchequer bills shall be kept, and cause such exchequer bills to be sold when it shall appear to them expedient, and may direct the proceeds thereof to be again laid out in the purchase of exchequer bills, or to be applied for the benefit of the creditors, subject to the controul of the Lord Chancellor.

§ 104. That assignee disobeying direction to pay or invest money, and retaining it, or permitting co-assignee to retain or employ it, shall be charged with £20 per cent.

Assignee becoming bankrupt, his certificate not to discharge his future effects.

§ 105. That if any assignee indebted to the estate of which he is such assignee, in respect of money so retained or employed by him as aforesaid, become bankrupt, if he shall obtain his certificate it shall only have the effect of freeing his person from arrest and imprisonment; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children excepted) shall remain liable for so much of his debts to the estate of which he was assignee, as shall not be paid by dividends under his commission, together with lawful interest for the whole debt.

§ 106. That the commissioners shall audit the accounts of the assignees not sooner than four months from the issuing, nor later than six months from the last examination.

Dividends, when and how to be made.

§ 107. That the commissioners shall, not sooner than four nor later than twelve calendar months from the issuing the commission, appoint a public meeting (whereof and of the purport whereof they shall give twenty-one day's notice in the *London Gazette*) to make a dividend of the bankrupt's estate, at which meeting all creditors who have not proved their debts shall be entitled to prove the same; and the said commissioners at such meeting shall order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such creditors as have proved debts under the commission, in proportion to their respective debts, and shall make an order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver another part thereof to the assignees, which order shall contain an account of the time and place of making such order, of the amount of the debts proved, of the money remaining

in the hands of the assignees to be divided, of how much in the pound is then ordered to be paid to every creditor, and of the money allowed by the commissioners to be retained by the assignees, with their reasons for allowing the same to be so retained; and the assignees, in pursuance of such order (and without any deed of distribution made for that purpose), shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose, from each creditor, for the dividend received by such creditor; and such order and receipt shall be a discharge to every such assignee for so much as he shall pay pursuant to such order; and no dividend shall be declared, unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath as aforesaid.

§ 108. That no creditor having security for his debt, or having made any attachment in *London*, or any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied, by seizure upon, or any mortgage of or lien upon any part of the property of such bankrupt before the bankruptcy; provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateable with such creditors.

BANKRUPT.
(6 Geo. 4. c. 16.)

Creditors having securities for their debts, not to receive more than other creditors.

§ 109. That if the bankrupt's estate shall not have been wholly divided upon the first dividend, the commissioners shall, within eighteen calendar months after the issuing of the commission, appoint a public meeting (whereof and of the purport whereof they shall give twenty-one days' notice in the *London Gazette*) to make a second dividend of the Bankrupt's estate, when all creditors who have not proved their debts may prove the same; and the commissioners at such meeting, after taking such audit as herein-before directed, shall order the balance in the hands of the assignees to be forthwith divided amongst such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees; in which case they shall, as soon as may be, convert such estate and effects into money, and within two calendar months after the same shall be so converted divide the same in manner aforesaid.

Final dividend within 18 months; except, &c.

§ 110. That the assignees shall file an account in the bankrupt office of unclaimed dividends remaining in their hands, which is to be invested by order of the Chancellor, and after three years divide the same among the other creditors.

§ 111. That no action for any dividend shall be brought against the assignees by any creditor who shall have proved under the commission, but if the assignees shall refuse to pay any such dividend, the Lord

No action to be brought for dividends.

BANKRUPT.

(6 Geo. 4 c. 16.)

Chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application.

§ 112. That bankrupt not surrendering and submitting to be examined; or not making discovery of his estate and effects; or not delivering up his goods, books, &c.; or removing or embezzling to the value of £10 shall be guilty of felony, &c.

Enlargement of
time for bank-
rupt surren-
dering.

§ 113. That the Lord Chancellor shall have power, as often as he shall think fit, from time to time to enlarge the time for the bankrupt surrendering himself for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

Allowance to
bankrupt for
maintenance.

§ 114. That it shall be lawful for the commissioners before the choice of assignees, and after such choice, for the assignees, with the approbation of the commissioners testified in writing under their hands, from time to time to make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family.

§ 115. That if any bankrupt apprehended by any warrant of the commissioners shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

§ 116. That the bankrupt shall deliver up his books of accounts to the assignees upon oath; shall attend assignees when required; shall be at liberty to inspect accounts; and after allowance of certificate to attend assignees in settling accounts; having allowance for attendance.

§ 117. That the bankrupt shall be free from arrest during examination, if not in custody; and if arrested, be discharged on producing summons.

§ 118. That commissioners may adjourn last examination of bankrupt *sine die*.

§ 119. That bankrupt in custody shall be brought before the commissioners at the creditor's expense. Assignees may appoint persons to attend bankrupt in prison.

§ 120. That persons concealing bankrupt's effects shall forfeit £100, &c.; and allowance of five per cent. to persons making discovery thereof.

Bankrupt dis-
charged of debts
by certificate of
conformity;

§ 121. That every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made proveable under the commission, in case he shall obtain a certificate of such conformity, so signed and allowed, and subject to such provisions as hereinafter directed; but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt.

but not to dis-
charge partner.

§ 122. That such certificate shall be signed by four-fifths in number and value of the creditors of the bankrupt, who shall have proved debts under the commission to the amount of £20 or upwards, or after six calendar months from the last examination of the bankrupt, then either by three-fifths in number and value of such creditors, or by nine-tenths in number of such creditors, who shall thereby testify their consent to the said bankrupt's discharge as aforesaid; and no such certificate shall be such discharge, unless the commissioners shall, in writing under their hands and seals, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the creditors have signed in manner hereby directed, and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud, and unless such certificate shall, after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard before the Lord Chancellor.

BANKRUPT.

(6 Geo. 4. c. 16.)

Certificate to be signed by four-fifths in number and value of creditors above £20.

After six months by three-fifths in number and value, or nine-tenths in number.

Allowance by Lord Chancellor.

§ 123. Provision for petitions for the allowance of certificates presented under repealed Act of 5 Geo. IV. c. 98.

§ 124. That the commissioners shall not sign any certificate unless they shall have proof, by affidavit in writing, of the signature of the creditors thereto, or of any person thereto authorised by any creditor, and of the authority by which such person shall have so signed the same; and if any creditor reside abroad, the authority of such creditor shall be attested by a notary public, *British* minister, or consul; and every such affidavit, authority, and attestation shall be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof.

Proof of signature of creditors.

§ 125. That any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this Act and the special matter in evidence.

Contracts, &c. to induce creditors to sign, void.

§ 126. That any bankrupt who shall, after his certificate have been allowed, be arrested, or have any action brought against him for any debt, claim, or demand hereby made proveable under the commission against such bankrupt, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give this Act and the special matter in evidence; and such bankrupt's certificate, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution, or detained in prison for such debt, claim,

Bankrupt having obtained his certificate, free from arrest, &c.

BANKRUPT.

(6 Geo. 4. c. 16.)

Future effects of bankrupt who has been bankrupt before, or compounded, or taken the benefit of the insolvent act, unless 15s. in the pound, to vest in the assignees, notwithstanding certificate.

Allowances to bankrupt out of his effects.

As to allowance to partner.

Fraudulent or gaming bankrupt not entitled to certificate or allowance.

or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any judge of the court wherein judgment has been so obtained, on such bankrupt's producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

§ 127. That if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors, or who shall have been discharged by any insolvent act, shall be or become bankrupt, and have obtained or shall hereafter obtain such certificate as aforesaid, unless his estate shall produce (after all charges) sufficient to pay every creditor under the commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself, his wife and children), shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such bankrupt was possessed at the issuing the commission.

§ 128. That every bankrupt who shall have obtained his certificate, if the net produce of his estate shall pay the creditors who have proved under the commission ten shillings in the pound, shall be allowed five per cent. out of such produce, to be paid him by the assignees, provided such allowance shall not exceed £400; and every such bankrupt, if such produce shall pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid £7 10s. per cent., provided such allowance shall not exceed £500; and every such bankrupt, if such produce shall pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid £10 per cent., provided such allowance shall not exceed £600; but if such produce shall not pay such creditors ten shillings in the pound, such bankrupt shall only be allowed and paid so much as the assignees and commissioners shall think fit, not exceeding three pounds per cent. and £300.

§ 129. That in all joint commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance although his other partner or partners may not be entitled to any allowance.

§ 130. That no bankrupt shall be entitled to his certificate, or to be paid any such allowance, and that any certificate, if obtained, shall be void, if such bankrupt shall have lost, by any sort of gaming or wagering, in one day £20, or within one year next preceding his bankruptcy £200; or if he shall, within one year next preceding his bankruptcy, have lost £200 by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within

one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or shall, after an act of bankruptcy committed or in contemplation of bankruptcy, have destroyed, altered, mutilated, or falsified, or caused to be destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document, with intent to defraud his creditors, or shall have concealed property to the value of £10 or upwards; or if any person having proved a false debt under the commission, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

§ 131. That no bankrupt after his certificate shall have been allowed under any present or future commission, shall be liable to pay or satisfy any debt, claim, or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement made or to be made after the going out of the commission, unless such promise, contract, or agreement be made in writing, signed by the bankrupt, or by some person thereto lawfully authorised in writing by such bankrupt.

§ 132. That the assignees shall, upon request made to them by the bankrupt, declare to him how they have disposed of his real and personal estate, and pay the surplus, if any, to such bankrupt, his executors, administrators, or assigns; and every such bankrupt, after the creditors who have proved under the commission shall have been paid, shall be entitled to recover the remainder of the debts due to him; but the assignees shall not pay such surplus until all creditors who have proved under the commission shall have received interest upon their debts to be calculated and paid at the rate and in the order following; (that is to say,) all creditors whose debts are now by law entitled to carry interest, in the event of a surplus, shall first receive interest on such debts at the rate of interest reserved or by law payable thereon, to be calculated from the date of the commission, and after such interest shall have been paid, all other creditors who have proved under the commission shall receive interest on their debts from the date of the commission, at the rate of four pounds *per centum*.

§ 133. That at any meeting of creditors after the bankrupt shall have passed his last examination (whereof and of the purport of which twenty-one days' notice shall have been given in the *London Gazette*), if the bankrupt or his friends shall make an offer of composition, or security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if at such second meeting nine-tenths in number and value of the creditors then present

BANKRUPT.
(6 Geo. 4. c. 16.)

Bankrupt not liable upon subsequent promises, unless in writing.

Assignees to pay surplus to bankrupt.

In case of a surplus all debts to carry interest.

Nine-tenths in number and value of creditors may accept a composition which shall bind the rest.

BANKRUPT.

(6 Geo. 4. c. 16.)

Mode of voting
in deciding upon
such composi-
tion.

shall also agree to accept such offer, the Lord Chancellor shall and may, upon such acceptance being testified by them in writing, supersede the said commission.

§ 134. That in deciding upon such offer as aforesaid, any creditor whose debt is below £20 shall not be reckoned in number, but the debt due to such creditor shall be computed in value; and that any creditor to the amount of £50 and upwards, residing out of *England*, shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat; and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner hereby required for such creditors voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall (if thereto required) make oath before the commissioners that there has been no such transaction between him or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid.

Construction of
the act to be be-
neficial for the
creditors, shall
extend to wo-
men, &c.
Acts by major
part of commis-
sioners, &c. va-
lid.

Act not to ex-
tend to Scot-
land or Ireland.

§ 135. That this Act shall be construed beneficially for creditors, and that nothing herein contained shall alter the present practice in bankruptcy, except where any such alteration is expressly declared, and that it shall extend to aliens, denizens, and women, both to make them subject thereto, and to entitle them to all the benefits given thereby; and all powers given to or duties directed to be performed by the commissioners or assignees, may be exercised and shall be performed respectively by the major part of the commissioners, or by one assignee, where only one shall have been chosen; and that the said Act shall not extend either to *Scotland* or *Ireland*, except where the same are expressly mentioned.

§ 136. That the Act shall commence 1st September, 1825.

BARGAIN AND
SALE.*To make tenant
to the præcipe.*

No. CLXXIV.

A Bargain and Sale (1) to make a Tenant to the Præcipe for suffering a legal Recovery by a Tenant in tail in possession.

Variations where the estate is in remainder, and the Tenant for life joins (2). Where it is an equitable estate (3). Where made by Lease and Release. Where the lands are situated in several counties, jurisdictions, &c.

THIS INDENTURE of parts, made the day of

(1) A tenant to the præcipe for suffering a recovery may be made by any species of conveyance calculated to pass the freehold, either by the common law or by the statute of uses, as feoffment, fine, lease and release, &c. see Seymour's ca. 10. Co. 95. The mode here adopted is by bargain and sale, which, on account of the convenience that, under circumstances, may result from its being put upon record by enrolment (a copy of which will be evidence, unless for the purpose of amending the recovery, *Ex parte Dawney*, 4 Taunt. 798), is most generally used for this purpose; and it is particularly proper where the recovery is suffered preparatory to a future sale of the lands in lots, in order to save the expense of attested copies of the deed to the several purchasers, who cannot require attested copies of any instrument on record. But should a lease and release be for any reason preferred, variations are subjoined adapting the precedent to that circumstance; and in this case Mr. Bradley recommends the deed to be registered if the lands be situated in a registrar county, that a copy may be produced if the deed itself be destroyed; see Brad. Point Bk. 8.

Bargain and sale a proper mode of assurance.

(2) As a recovery will not only bar entails, but also extinguish collateral powers, as powers to jointure, to lease, &c. which are frequently annexed to the estate of a tenant for life; it will be proper, in order to preserve these interests where a tenant for life is required to join in making a tenant to the præcipe, and to prevent the merger of his estate in the inheritance, that the conveyance be made during the joint lives of the tenant for life and tenant to the præcipe, which, by leaving the reversion in the tenant for life (his own estate being greater than that *per autre vie* in the tenant to the præcipe), will not only prevent a merger, but also preserve the powers annexed to his estate; see *Edwards v. Slater*, Hard. 410; *King v. Nelling*, 1 Vent. 225. The same objects are sometimes effected by the tenant for life previously demising his estate to a trustee for a term of years, the form of which will be given post. "DEMISE;" see also 1 Prest. Conv. 468.

Tenant for life.

(3) In the following form, I have supposed the legal estate to be in

Equitable recovery.

BARGAIN AND
SALE.

To make tenant
to the præcipe.

[* in the year of the reign, &c. (1) and] in the year
of our Lord . BETWEEN (*the tenant in tail*) (2), of, &c. of

the tenant in tail, or tenant for life, himself, but this is not unfrequently in trustees; and the tenant in tail, or tenant for life, has only a trust or equitable estate; in which case, a recovery suffered by him alone, without the concurrence of the trustees, will bar only trust or equitable remainders over; *Carpenter v. Carpenter*, 1 Vern. 440; *Grenville v. Blyth*, 16 Ves. 224; for if the remainders be legal estates, it is absolutely necessary that the legal freehold should be conveyed by the trustees for the purpose of making a legal tenant to the præcipe; *Phillips v. Bridges*, 3 Ves. 120; *Salvin v. Thornton*, 1 Brow. Ch. Ca. 73. The same form, however, is to be observed in equitable as in legal recoveries; that is to say, the person having the equitable freehold (or *cestui que trust*) for life, or other greater estate, must convey to the tenant to the præcipe; and the same persons whom it would be necessary to vouch if the remainder or other estate intended to be barred were legal, must be vouched where it is an equitable one.

Date.

(1) The deed should be dated and executed before or within the term, sessions or assizes, in which the recovery is intended to be suffered; see 14 Geo. 2. c. 20; *Goodwright dem. Burton v. Rigby*, 2 Hen. Black. 46; 5 Durnf. and E. 177; *Roe dem. Hale v. Wegg*, 6 ib. 708; in order that the tenant to the præcipe may have the freehold in him at the return of the writ.

Person having
the legal freehold
a necessary
party.

(2) Where the recovery is to bar a legal estate tail, the person in whom the legal estate of freehold (not less than for life) is vested, whether as mortgagee or the like, is absolutely necessary, to make a good tenant to the præcipe; and when it is to bar an equitable estate tail, then it is equally necessary that the person having the equitable and beneficial estate of freehold should convey to the tenant. When this freehold is in the tenant in tail himself, he may convey to the tenant to the præcipe; but should it be in a third person, as mortgagee, &c. such person will be of the first part, the tenant in tail as vouchee of the second part, the tenant to the præcipe of the third part, and the demandant of the fourth part. And should there be more tenants in tail than one as coparceners, or tenants in common, they may all (according to the better opinion) join in the same recovery, see 1 Prest. Conv. 16, although this has by some been doubted.

Wife of tenant
in tail not a ne-
cessary party.

When the wife to the tenant in tail has a title to dower, or other interest in the land, she is usually made a party for the purpose of joining in the declaration of uses; but as the husband may make a good tenant to the præcipe, even of her lands, without her joining, Fig. 71, 2, Roll. Ab. 394. pl. 4, (unless in an equitable recovery, where the equitable freehold is in the wife, vide 1 Prest. Conv. 34), it is not essential that she should be a party.

Trustees.

If trustees appointed for the purpose of preserving contingent remainders join with the tenant in tail in destroying the entail (which they may do after he has attained twenty-one), make them parties of the first part. It is to be noticed, however, that the trustees will not be justified in concurring to bar the entail until the tenant in tail attain that age; nor can a purchaser, or mortgagee, with safety accept of a

the first part, (*the tenant to the præcipe*) (1) of, &c. of the second part, and (*the demandant*) (2) of, &c. of the third part. WHEREAS (3) under or by virtue of certain indentures of lease and release (4), bearing date respectively the and days of , which was in the year , and made or expressed to be made between, &c. the said (*tenant in tail*), is seised, to him and his

BARGAIN AND
SALE.

To make tenant
to the præcipe.

title with notice of his minority; *Biscoe v. Perkins*, 1 Ves. and B. 485. 491; *Moody v. Walters*, 16 Ves. 307.

(1) The tenant to the præcipe is a person to whom the freehold is conveyed for the purpose of being the supposed defendant against whom the recovery is had; and although the lands lie in different jurisdictions, so that two recoveries be necessary, the same person may be tenant to the præcipe of the whole; but in such case it is usual to have a tenant to the præcipe for each jurisdiction.

Tenant to the
præcipe.

(2) The demandant may be a purchaser or mortgagee, or any person named *pro forma*, as the supposed plaintiff in the action upon which the lands are recovered. Sometimes two demandants are named, lest, if there be only one, he should die before judgment be given in the recovery; in which case, the proceedings on the recovery must commence *de novo*. No new recovery deed, however, will be necessary, as the demandant may be named by a separate instrument.

Demandant.

(3) It seems proper in a deed to make a tenant to the præcipe for suffering a recovery, that so much of the deed by which the entail was created should be recited as is sufficient to shew that the recovery and vouchers are sufficient to bar it. If the tenant for life be a party, recite the deed by which his life estate was created. The form of such recital may be as follows:

Recitals.

Tenant for life a
party.

"WHEREAS, by indentures of lease and release, &c. or by the the last will and testament of, &c. (*or as the case was*) the lands and hereditaments hereinafter described, were conveyed and assured [*or devised*] unto and To THE USE of the said (*tenant for life*) and his assigns, for and during the term of his natural life, with remainder To THE USE of the said (*tenant in tail*), in tail general, with divers remainders over. AND WHEREAS the said (*tenant in tail*) is the first son of the body of the said (*tenant for life*). AND WHEREAS the said (*tenant in tail*) hath attained the age of twenty-one years, and is desirous of barring the said entail, and the said (*tenant for life*) hath agreed to join with him therein in the manner hereinafter expressed."

(4) If the estate tail be created by a will, say,

Estate tail created by will.

"AND WHEREAS, under or by virtue of the last will and testament of deceased, bearing date on or about the day of which was in the year , the said (*tenant in tail*) is seized," &c. as above.

**BARGAIN AND
SALE.**

*To make tenant
to the præcipe.*

WITNESS.

That for the
purpose of bar-
ring the entail,

and in consider-
ation of the sum
of 5s.

heirs, for an estate in fee tail in possession, with divers remainders over (1), of and in the messuages, lands, and hereditaments hereinafter described, and intended to be hereby bargained and sold, or otherwise assured. AND WHEREAS the said (*tenant in tail*) is desirous of barring the said entail, and acquiring the fee simple of and in the said hereditaments. NOW THIS INDENTURE WITNESSETH, that for docking, barring and destroying all estates tail of and in the messuages, lands, tenements and hereditaments hereinafter bargained and sold, or otherwise assured or intended so to be, and all remainders and reversions expectant or depending thereupon, and all conditions and collateral limitations thereunto annexed or affecting the same (2), and for settling and assuring the same hereditaments to the use of the said (*tenant in tail*) in fee simple, and in consideration of the sum of 5s. (3) of lawful current money of England to the said (*tenant in tail*) in hand well and truly paid by the said (*tenant to the præcipe*), at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HE the said (*tenant in*

Fine sufficient
when remainder
in tenant tail.

(1) If the only subsisting remainder over expectant upon the determination of the estate tail be in the tenant in tail himself, it may be barred by fine; but as a fine will in some cases let in incumbrances created by intermediate remainder-men, a recovery is frequently adopted where a fine would have an equipotent operation.

Dower.

(2) If the tenant in tail be married, and his wife be entitled to dower, add,

“And for barring and extinguishing all dower, and right and title to dower of the said (*wife*) the wife of the said (*tenant in tail*), of and in the said lands and hereditaments, and for settling and assuring the same hereditaments to, upon and for the uses, trusts, intents and purposes hereinafter declared or expressed concerning the same, and for and in consideration,” &c. *as above*.

Consideration.

(3) This consideration of 5s. or some other consideration of money or monies worth is necessary, for the purpose of vesting the use in the bargainee, and must not, therefore, where the deed is intended to operate as a bargain and sale, be omitted; but should the tenant to the præcipe be made by lease and release, this averment of the consideration paid is immaterial.

Tenant for life a
party.

If the tenant for life be a party, say,

“In consideration of the sum of 5s. of lawful current money of England to the said (*tenant for life*) and (*tenant in tail*) respectively, in hand well and truly paid by the said (*tenant to the præcipe*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, the said (*tenant for life*), at the

BARGAIN AND
SALE.*Tenant to the
præcipe.*the tenant in
tail bargains and
sells.
Parcels.

tail) HATH granted, bargained and sold (1), and by these presents DOTH grant, bargain and sell unto the said (*tenant to the præcipe*) (2) and his heirs, ALL, &c. (3) or howsoever otherwise the said messuages, lands, tenements and hereditaments, or any of them, now are or is, or heretofore were or was situated, tenanted, called, known, described or distinguished (4) [and (*if such the intent*) all and singular other the messuages, lands, tenements and hereditaments, situated, lying and being in the town, parish, village or district of _____, in the said county of _____, of which the said (*tenant in tail*) is in any manner seised or entitled unto for an

request of the said (*tenant in tail*), testified by his being a party to and sealing and delivering these presents, and the said (*tenant in tail*), according to their respective estates and interests in the said premises, HAVE, and each of them HATH granted, bargained and sold, &c." *as above*.

(1) If the conveyance be by lease and release, say,

Lease and re-
lease.

"HATH granted, bargained, sold, aliened and released, and by these presents DOTH grant, bargain, sell, alien and release unto the said (*tenant to the præcipe*) and his heirs, ALL," &c.

(2) If the lands of which the recovery is intended to be suffered lie in various jurisdictions, as some in England, others in Wales, &c. it may sometimes be convenient, although not necessary, to convey them to as many tenants as there are different jurisdictions. Where, however, the *præcipe* deed is of a nature that uses may be declared upon it, all the lands may be conveyed to one person, to the use, as to the lands contained in one jurisdiction, of the tenant of the recovery to be suffered in that jurisdiction; and as to the lands contained in the other jurisdiction, to the use of the tenant of the recovery to be suffered in such other jurisdiction.

Lands in differ-
ent jurisdictions
may be convey-
ed to one te-
nant to *præcipe*.

(3) Insert here a particular and accurate description of the lands of which the recovery is intended to be suffered; in doing which, great care should be taken that all and no more than the lands intended to be comprised in the recovery should be inserted. In this it will be perceived a recovery differs from a fine; which, being only an agreement between the parties on a compromise of an action before judgment given, will pass no more than is intended to pass, although more may be comprehended in the description.

Parcels in reco-
very deed should
be correctly set
out.

(4) If the conveyance be by lease and release, and the parcels are numerous, add here,

Lease and re-
lease.

"And also all other the messuages, lands, tenements and hereditaments (if any) which are comprised in and expressed to be conveyed by a certain indenture of bargain and sale for a year, hereinafter referred to as bearing date the day next before the day of the date hereof."

BARGAIN AND SALE.*Tenant to the præcipe.*

estate tail, either legal or equitable, under or by virtue of the said hereinbefore in part recited indentures (*or will*), or otherwise howsoever,] and every part and parcel of the same, together with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, under-woods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind] and all manner of [other] rights, privileges, easements, advantages, appendages and appurtenants whatsoever, to the said hereditaments and premises, or any of them, or any part thereof respectively belonging or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore lawfully holden, used, occupied or enjoyed (1); and all the estate (2), right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of him the said (*tenant in tail*), in, to, out of, or respecting the said hereditaments and premises, or any part thereof (3). **TO HAVE AND TO HOLD** the messuages, lands, tenements, hereditaments, and all and singular other the premises hereby bar-

To hold to the tenant to the præcipe.

Lease and release.

(1) If the conveyance be by lease and release, add here,

“(All which said messuages, lands, tenements and hereditaments are now in the actual possession of or legally vested in the said (*tenant to the præcipe*), by virtue of a bargain and sale to him thereof made by the said (*tenant in tail*), for 5s. consideration, by indenture bearing date on the day next before, and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession); and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively.”

“All the estate.”

(2) Where the conveyance is made (as it sometimes is) to the tenant to the præcipe, during the joint lives of himself and the tenant in tail (see *post.* p. 35. n. (1), this grant of “all the estate and interest” of the tenant in tail in the premises should be omitted, as there would be an inconsistency in making him grant all his estate, when such estate is greater than the estate for life subsequently given to the tenant to the præcipe by the *habendum*.

Grant of title deeds.

(3) The grant of title deeds, which usually follows in this place, should be inserted only where the intent of the conveyance is to make a tenant to the præcipe for suffering a recovery to the use of a purchaser,

gained and sold, or otherwise assured or intended so to be, [and every part and parcel of the same, with their and every of their appurtenants,] unto and to the use of him the said (*tenant to the præcipe*) his heirs and assigns, for ever (1), but to the intent

BARGAIN AND
SALE.

*Tenant to the
præcipe.*

mortgagee, or others, and not where it is merely to bar the entail, and the use is declared to the tenant in tail himself.

(1) If the tenant for life join (see *ante*, p. 29. n. (2)) say,

Tenant for life a
party.

“Unto and to the use of the said (*tenant to the præcipe*) and his assigns, for and during the joint natural lives of the said (*tenant for life*) and (*tenant to the præcipe*), To the intent, &c.” as above.

It is not essential in a deed to make a tenant to the præcipe, that the conveyance should be declared to be to the use of the tenant, as it is sufficient that he have the freehold in him at the time of the recovery; and where the deed is by bargain and sale, the use will be executed in the bargainee by virtue of the pecuniary consideration, and the statute of uses. Neither need the estate be limited to him in fee, but may be to him either for his own life or for the joint lives of himself and the tenant in tail, as any estate, not less than a freehold, is sufficient to support the recovery.

Use need not be
mentioned.

If the lands of which the recovery is intended to be suffered lie in different counties, as part in England and part in Wales, (and the conveyance be by lease and release,) say,

Lands in differ-
ent counties, &c.

“Unto the said (*a trustee*) and his heirs, To THE USES nevertheless, and for the ends, intents and purposes hereinafter declared or expressed concerning the same, (that is to say) as to and concerning such of the messuages, lands, tenements and hereditaments as are hereinbefore mentioned to be situated in that part of the United Kingdom of Great Britain and Ireland called England, To THE USE of the said (*first tenant to the præcipe*) and his heirs; and as to and concerning such of the said messuages, lands, tenements and hereditaments as are hereinbefore mentioned to be situated in that part of the United Kingdom of Great Britain and Ireland called Wales, To THE USE of the said (*second tenant to the præcipe*) and his heirs, To the intent that each of them the said (*tenants to the præcipe*) may become and be a perfect tenant of the freehold of all and singular the messuages, lands, tenements and hereditaments so limited to him in use as aforesaid, with their and every of their rights, members and appurtenants, in order that two or more good and perfect common recoveries, with double voucher, may be had and suffered of the same respectively.

Or if part of the lands lie within the jurisdiction of the Courts of Westminster, and part within that of a County Palatine, say,

County Pala-
tine.

“As to and concerning such of the said messuages, lands, tene-

BARGAIN AND
SALE.Tenant to the
præcipe.Form of reco-
very.

only that he the said (*tenant to the præcipe*) and his heirs may become and be a perfect tenant and perfect tenants of the freehold, of all and singular the same hereditaments and premises, in order that one or more good and perfect common recovery or common recoveries, with double voucher (1), may be had and suffered of the same lands and hereditaments (2). [AND for that purpose it is hereby agreed, declared and directed, by and between all the said parties to these presents, so far as they respectively are interested, that the said (*tenant to the præcipe*) (3) shall permit and suffer the said (*demandant*), or some other person or persons, at the costs and expense in all things of the said (*tenant in tail*), his heirs, executors or administrators, at any time or times hereafter, to sue forth and prosecute against him the said (*tenant to the præcipe*), out of his

ments and hereditaments as are hereinbefore mentioned to be situated in the said county of _____, To THE USE of the (*first tenant to the præcipe*) and his heirs; and as to such of the said messuages, lands, tenements and hereditaments as are hereinbefore mentioned to be situated in the county palatine of _____, To THE USE of the said (*second tenant to the præcipe*) and his heirs, To the intent that each, &c." as in the preceding variation.

Double voucher.

(1) A recovery for the purpose of barring an estate tail will be good, although it be with single voucher only; see *Fearne's P. Wks.* 335. But as such a recovery will bar only an estate tail in *possession*, and this possession may have been divested, or the entail may be in remainder, or so otherwise circumstanced, as to render a single voucher insufficient, recoveries are seldom suffered with less than double voucher; *vide* 2 *Blac. Com.* 359.

Conciseness.

(2) If great conciseness be required, the parts in the text from this bracket to that p. 39 may be omitted, and the following form introduced in its stead.

"Against the said (*tenant to the præcipe*) by the said (*demandant*), as plaintiff upon a writ of entry *sur disseisin en le post*, in his Majesty's Court of Common Pleas at Westminster, wherein the said (*tenant to the præcipe*) shall vouch to warranty the said (*tenant in tail*), who shall vouch over the common vouchee of the said after the manner of common recoveries with double voucher in such cases used. And it is hereby granted, declared, &c. [*declaring the uses as post p 39, see marg.*].*

Lands in differ-
ent counties, &c.

(3) If the lands lie in different counties or jurisdictions, and there be two tenants to the præcipe, say,

"Each of them the said (*tenants to the præcipe*)", *throughout the precedent.*

Majesty's High Court of Chancery, one or more writ or writs of entry *sur disseisin en le post* (1), returnable before his Majesty's Jus-

BARGAIN AND
SALE.

Tenant to the
præcipe.

(1) If the lands be situated in different counties, say,

Lands in differ-
ent counties.

"Two or more writs of entry *sur disseisin en le post*, returnable before his Majesty's Justices of the Court of Common Pleas at Westminster; and by one of the said writs demand of the said (*first tenant to the præcipe*) the messuages, lands, tenements and hereditaments, situated in the said county of _____; and by the other of the said writs demand of the said (*second tenant to the præcipe*) the messuages, lands, tenements and hereditaments, situated in the said county of _____, with their and every of their respective rights, members and appurtenances, by such good, sufficient and proper names," &c. *as above*.

*If the lands are of ancient demesne tenure, say,

Ancient de-
mesne.

"Sue forth and bring out of his Majesty's High Court of Chancery, and prosecute in his Majesty's manor of _____, in the county of _____, according to the custom thereof, against the said (*tenant to the præcipe*) one or more writ or writs of right, close in the nature of a writ or writs of entry *sur disseisin en le post*, to be directed to the bailiffs of the manor aforesaid."

If the lands be in a Welch county, say,

Lands in Wales.

"One or more writ or writs of *quod ei deforceat*, in the nature of a writ or writs of entry *sur disseisin en le post*, returnable before his Majesty's justice or justices of Great Sessions for the said county of _____, and to make protestation to pursue the said writ or writs, as and in the nature of a writ or writs *sur disseisin en le post*, according to the statute provided in that behalf, thereby demanding," &c. *as above*.

If in a county palatine, say,

Lands in a
county palatine.

"Out of his Majesty's Chancery for the county palatine of _____, one or more writ or writs, in the nature of a writ or writs of entry *sur disseisin en le post*, returnable before the Justices of Assize for the same county, thereby demanding," &c. *as above*.

If the lands lie in the City of London, or other city having jurisdiction to suffer recoveries, say,

City of London.

"One or more writ or writs of *droit patent*, directed to the mayor and sheriffs of the City of _____, in the Court of Hustings, or other court holden concerning pleas of land in the Guildhall of the said city, according to the custom of the said city, and the course of

**BARGAIN AND
SALE.**Tenant to the
præcipe.

tices of the Court of Common Pleas at Westminster, thereby demanding of the said (*tenant to the præcipe*) the messuages, lands, tenements, hereditaments and premises hereby bargained and sold, or otherwise assured or intended so to be, and every part of the same, with their and every of their rights, members and appurtenances, by such good, sufficient and proper names, number of messuages or tenements, acres of land, and other quantities, qualities and descriptions as shall be sufficient to comprehend, ascertain and identify the same respectively. And it is further agreed that the said (*tenant to the præcipe*) shall, in his own person, or by his attorney or attornies, lawfully authorised in that behalf, appear to the same writ or writs, and vouch to warranty the said (*tenant in tail*); and that the said (*tenant in tail*) shall, in his own proper person, or by his attorney or attornies, lawfully authorised in that behalf, appear gratis, and freely enter into the said warranty and take the same upon himself, and vouch over to warranty the common vouchee for the time being of the said Court of Common Pleas (1), who shall also appear gratis, and freely enter into the warranty of the said (*tenant in tail*), and after imparlance make default, so that judgment may be given upon the said writ or writs for the said (*demandant*), or other demandant or demandants of the said hereditaments, to recover the same against the said (*tenant to the præcipe*), and for the said (*tenant to the præcipe*) to recover over in value against the said (2) (*tenant in tail*), and for the said (*tenant in tail*) to recover in value

common recoveries there, thereby demanding according to the custom of the said city," &c. *as above*

Copyholds.

If the lands be copyhold, say,

"One or more writ or writs of *droit close*, directed to the steward of the said manor, duly returnable, and to make protestation to prosecute the same writ in the nature of a writ or writs *sur disseisin en le post*, thereby demanding," &c. *as above*.

Wales.

(1) If the lands be in a Welch county, say,

"The common vouchee for the time being of the said court of *Great Session*."

Copyholds.

If the lands be copyhold, say,

"The common vouchee for the time being of the said court of the lord of the said manor of ."

Treble voucher.

*(2) If the recovery be intended to be with treble voucher, say,

"In which the said (*tenant to the præcipe*) shall vouch to warranty the said (*tenant for life*) [and wife] who shall thereupon appear,

against the said common vouchee, as is usual or proper in such cases; and it is further agreed, declared, and directed, that upon all or every of such recovery and recoveries execution shall or may be sued out and prosecuted by, and seisin delivered unto the said (*demandant*), or other demandant or demandants aforesaid, accordingly; and that every other act and thing requisite, usual or proper to be done or executed for the purpose of suffering and perfecting a common recovery or common recoveries, with double or other voucher or vouchers, and barring the estate tail of the said (*tenant in tail*) of and in the said messuages, lands, tenements and hereditaments, and all reversions and remainders over and expectant upon the same estate tail, may be made, done, executed and perfected in all things (1).] AND it is hereby granted, declared and agreed by and between the parties to these presents, as far as each of them respectively is interested or concerned; [†and they do hereby, for themselves severally and respectively, and for their several and respective heirs, executors and administrators, consent and agree, according to such their respective interests, that the recovery and recoveries hereby agreed to be suffered, shall be suffered and perfected with all possible and convenient dispatch; and that they the said parties respectively, and their respective heirs, shall and will, on their respective parts, use their utmost endeavours to give effect to the same recovery, and also to these presents, And also] that, immediately upon and after judgment shall have been obtained, and seisin had and taken upon such recovery or recoveries (2), the same recovery and recoveries, and also these presents, [and the assurance hereby made, and all and every other common recovery and common recoveries, fine and fines, and other

**BARGAIN AND
SALE.**

*Tenant to the
præcipe.*

Declaration of
uses.

*

&c. and vouch over the said (*tenant in tail*), who shall also appear, &c. and vouch over the common voucher of the said Court.

*(1) If the lands are ancient demesne, it is usual to add,

Ancient de-
mesne.

“According to the custom of the manor aforesaid, and the usual course of common recoveries for assurance of lands within the same manor in such cases time out of mind of man used and approved.”

† If conciseness be desired, the lines and words within brackets, here and in the subsequent parts of the precedent, may be omitted.

Conciseness.

(2) If the lands lie in different jurisdictions, say,

Lands in differ-
ent counties, &c.

“Upon each of the said recoveries, the same recoveries respectively, and also these presents, &c.” *as above*.

BARGAIN AND
SALE.Tenant to the
præcipe.

assurances whatsoever, at any time or times heretofore, or to be at any time or times hereafter, had, made, done, levied, suffered and executed, of or concerning the messuages, lands, tenements and hereditaments hereby bargained and sold, or otherwise assured or intended so to be, or any part thereof, either alone or together with any other lands, tenements or hereditaments, by or between the parties to these presents, or any or either of them, or to which they, or any or either of them is or are, or shall or may be parties or privies, or a party or privy,] shall, as to all the same parties respectively, [as far as they respectively can, and lawfully or right-fully ought to direct the uses of the same common recovery or common recoveries, fine or fines, and other assurances,] be and enure, and be adjudged, expounded, construed, deemed, and taken to be and enure, [and that the same was and were meant and intended, and is and are hereby directed and declared to be and enure, and that the person or persons to whom the said common recovery or common recoveries, fine or fines, and other assurances respectively, have or hath been, or shall or may be suffered, levied, made or executed, shall stand and be seised, as to and concerning all and singular the messuages, lands, tenements and hereditaments hereby bargained and sold, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members and appurtenants,] To and for the use (1) and behoof of the said (*tenant in tail*) (2), his heirs and assigns for ever, as or for an

Use to tenant.

(1) When a recovery is intended to enure to the use of the tenant in tail himself, it is not essential that it should be expressed, as the use will, according to the better opinion, if none be declared, result to him in fee, and see 2 Roll. Ab. 789. pl. 1.

Tenant for life.

(2) If the tenant for life join, say,

“To the use of the said (*tenant for life*) and his assigns, for and during the term of his natural life, by way of confirmation of the said estate and interest of him the said (*tenant for life*) in the said messuages, lands, tenements, and hereditaments, with the appurtenances thereunto belonging, and also of all powers, privileges, and incidents appendant or annexed to the same estate and interests, and subject thereto, To the use of the said (*tenant in tail*), his heirs and assigns, for ever.”

Remainder-man.

If the recovery be suffered by a remainder-man expectant upon a failure of issue of tenant for life, add,

“* And (*before the use*) to the further intent and purpose to cor-

estate of inheritance in fee simple (*or other use at pleasure* (1)), and to or for no other use (2), intent or purpose whatsoever (3).
IN WITNESS, &c.

Sealed and delivered, &c.

BARGAIN AND
SALE.

*Tenant to the
præcipe.*

roborate and confirm the several uses and estates, in or by the said in part recited indenture [*or will devised*] or limited unto or for the benefit of the first and other sons, if any, of the body of the said (*tenant for life*), and the heirs male of their bodies successively, according to the true intent and meaning of the said indenture [*or will*], and subject to the said several uses, estates, and interests so mentioned or intended to be hereby corroborated and confirmed, and as and when the same shall respectively determine, to the use of the said (*remainder-man*) his heirs and assigns for ever," &c. &c.

(1) If the uses are intended to be declared to a purchaser, mortgagee, or other person taking under a conveyance by a separate deed, say,

Uses by separate deed.

" * To such uses, upon such trusts, and for such ends, intents, and purposes, as are declared and expressed concerning the same, in or by a certain indenture of release already prepared and engrossed, bearing or intended to bear date the day next after the date hereof, and made or expressed to be made between," &c.

If it be intended that uses should be declared to bar dower, say,

Uses to bar dower.

" To the use of such person or persons, and for such estate or interest and intents and purposes, as the said (*tenant in tail*) shall by any deed, will, or other sufficient writing, direct or appoint, and in default thereof, to the use of him the said (*tenant in tail*) during the term of his natural life, with remainder to the use of [(a *trustee*) his executors or administrators during the life of the said (*tenant in tail*), but in trust for him and his assigns, with remainder to the use of] the right heirs of him the said (*tenant in tail*) for ever."

See various other forms of limitation for barring dower, *ante*, MOD. PRÆC. Vol. I. No. XXVIII. p. 442. in notis.

(2) It has been observed in a preceding part of this work, that no use can be declared on a bargain and sale but to the bargainee himself; but this doctrine does not apply to a bargain and sale made for the purpose of suffering a recovery, as the seisin upon which the uses are declared is not in the bargainee, but in the recoveror or demandant; and see *Webb v. Hill*, Cro. Eliz. 21.

Uses in a bargain and sale.

(3) If tenant for life join, a proviso is sometimes added to prevent any incumbrances of the remainder-man being let in upon his estate (and see 1 Prest. Conv. 107), but the mode pointed out in the preceding notes (see *ante* p. 35. n. (1)) is more simple, and equally efficacious. The proviso alluded to is as follows.

£100,000 clause.

* Provided always, and these presents are upon this express con-

BARGAIN AND
SALE.Tenant to the
præcipe.

dition nevertheless, and it is hereby declared to be the true intent and meaning of these presents, that if the said (*tenant to the præcipe*), his executors or administrators shall not well and truly pay or cause to be paid unto the said (*tenant for life*), the full and just sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, on the day of now next ensuing, then the grant, bargain, and sale of the messuages or tenements, lands, hereditaments, and premises made by these presents shall from henceforth cease and be void; and in such case it shall and may be lawful to and for the said (*tenant for life*), or his assigns, to enter into or upon the said messuages or tenements, lands, hereditaments, and premises, or any part thereof, in the name of the whole, and the same to have again, hold, and enjoy as in his or their former estate, any thing herein contained to the contrary in anywise notwithstanding. IN WITNESS," &c. (1)

Execution.

(1) The tenant of the præcipe usually executes the recovery deed, in order to shew his agreement to the declaration of uses; but this is not necessary; neither is it material that the demandant should execute; but it must be under the *hand and seal* of the bargainor.

Enrolment.

. Where the deed to make a tenant to the præcipe is made by bargain and sale, operating as such, care must be taken that it be enrolled in due time, *i. e.* within six months after the date, or the recovery will be voidable, see 27 Hen. 8. c. 16.

*This enrolment may be either in Chancery, the King's Bench, Common Pleas, or Exchequer, 2 Inst. 674, or before the Custos Rotulorum, and two Justices of the Peace, of the county where the lands lie, or any two of them, the Clerk of the Peace being one. And although the lands lie in several counties, one enrolment will be sufficient, if it be made in one of the King's Courts at Westminster; but if before the Custos Rotulorum, &c. there must be a distinct enrolment for each county in which the lands are situated.

The six months limited for the time of enrolment, must be accounted according to the computation of twenty-eight days to the month; a month, in its proper and original signification, being the space of time measured by the complete course of the moon, as the year is the time measured by the complement of the course of the sun; see 2 Inst. 674; Shep. Touch. 223; and from the date and from the day of the date in this case is taken as all one; the deed, therefore, may be enrolled either on the day it bears date, Clayton's Ca. 5 Co. 1; 2 Inst. 674; Norris v. Hundred of Gawtry, Hob. 140; Ex parte Fallon, 5 Durnf. and E. 287; or on the last day of the sixth month after; for though, when an interest passes from the day of the date, the day itself is excluded, Anon. 1 Ld. Raym. 480; yet, when a time is stinted in which an act is to be done, it is in order to hasten the doing of that act; and therefore the doing of it is on the day from whence the period is first reckoned within the time appointed, and the last day of the sixth month is within the words of the time

given; see *Rex v. Adderly*, 2 Dougl. 463; *Castle v. Burditt*, 3 Durnf. and E. 625; *Glassington v. Rawlins*, 3 East, 406; and if the deed have no date, the six months are to be reckoned from the delivery, but not otherwise, 2 Inst. 676; *Norris v. Hundred of Gawtry*, Hob. 140.

*If the lands be situated in any city, borough, or town corporate, having authority, or being lawfully accustomed to enroll deeds and evidences, it seems the deed need not be enrolled either at the Courts of Westminster, or in such city or borough; for lands lying in those places are exempted out of the stat. of 27 Hen. 8. c. 16. without any provision being made for enrolment elsewhere. See 2 Inst. 676. *Prest. Abst.* vol. iii. p. 94. and see *Rex a. Reed v. Hopper*, 3 Price, 495.

BARGAIN AND
SALE.

*Tenant to the
precipe.*

Town corporate.

N.B. As a recovery will be a revocation of a will previously made, and as this is a matter of which the generality of testators must be supposed to be ignorant, it is the duty of the solicitor concerned in suffering a recovery to apprise his client of this circumstance, and remind him of the propriety of republishing his will.

Recovery re-
vokes previous
will.

BARGAIN AND
SALE.House, &c.
(for incumbents).

No. CLXXV.

**A Bargain and Sale to an Incumbent of a Resident Dwelling-house, under Act of Parliament (1).*

Variations where Land is also conveyed. Also where it is made by way of exchange for other lands, &c. (2)

Recitals.

THIS INDENTURE made the day of in the
year of the reign, &c. , and in the year of our Lord
 , BETWEEN A. B., of of the one part; C. D.
ordinary of the rectory, vicarage, chapelry, or perpetual cure [*as the
case may be*], of in the county of ; E. F. of
patron of the said rectory, &c. and the Rev. G. H. clerk, incumbent
of the said rectory, &c. of the other part. WHEREAS there is no
parsonage house belonging to the said rectory, &c. [*or the parson-
age house belonging to the said rectory &c. is become so ruinous,
and decayed (or so mean), that it is not fit for the habitation of the
minister of the said rectory, &c.*] and one year's net income or pro-
duce of the said living or benefice will not be sufficient to rebuild or
repair the said house, with the necessary offices belonging thereto.
AND WHEREAS a certain messuage, house, or the tenement with
the buildings thereto belonging, situate in , the property of

Vide 51 Geo. 3.
c. 115.

(1) By 51 Geo. 3. c. 115. the powers given by former acts for the encouragement of building churches, &c. are extended, and it is enacted that the King as to crown lands, and all persons whatever as to other land, may by deed enrolled in Chancery grant to the rector, vicar, or other minister of any church or chapel (of the Church of England service), land, not exceeding five statute acres, part of the waste of any manor, for the purpose of rebuilding or enlarging of such church or chapel, or for a burial-ground thereto; or for augmentation of the glebe land, or building or enlarging the house of residence of the vicar, &c. notwithstanding the statute of mortmain. See also 58 Geo. 3. c. 45. 59 ib. c. 134. 3 and 4 Geo. 4. c. 72. and 6 ib. c. 8. relative chiefly to the exchange of lands for the above purpose; by the last of which acts the power of exchange is extended to any number of acres.

Exchange.

(2) See also *post*. "EXCHANGE."

the said A. B., and lying within the distance of yards from the church [or chapel as the case shall be] of the said rectory, &c. appears to the said ordinary, patron, and incumbent proper and convenient for the habitation and use of the minister of the said rectory, &c. [and more commodious than the present house and building upon the glebe of the said rectory, &c. (*in cases where there are any*)] and a contract hath been made by the direction and with the approbation and consent of the said ordinary, patron, and incumbent, with the said A. B., which is hereby ratified and confirmed by the said ordinary, patron, and incumbent, for the absolute purchase of the said messuage, house, or tenements and buildings, for the price or sum of £ pursuant to the directions of an Act past in the year of the reign of His Majesty King the intituled an Act, &c. [*set forth the title of the Act.* (1)] Now THIS INDENTURE WITNESSETH that the said A. B., for and in consideration of the said sum [or several sums] of [and] (2) to him in hand paid for the purchases aforesaid [*if both the buildings and lands are purchased for money*], the receipt of which said sum [or sums of money

BARGAIN AND
SALE.House, &c.
(for incumbent).WITNESS.
Bargainor sells
house.

(1) If land also be conveyed by the same person conveying the house, &c. add,

Land also con-
veyed.

“AND WHEREAS a contract has likewise been made with the said A. B. by the like direction, approbation, and consent, which is hereby likewise ratified and confirmed by the said ordinary, patron, and incumbent, for the absolute purchase of the inheritance of a certain yard, garden, orchard, and piece or parcel of land, [*describing them particularly as the case shall be*] lying near or convenient to the said messuage, house, tenement, and buildings, containing by admeasurement , for the price or sum of £ which have been agreed by the said ordinary, patron, and incumbent, to be raised by the sale (or exchange) of certain lands or tithes [*as the case shall be*] belonging to the said rectory, &c. herein-after described, pursuant to the powers given by the said act; that is to say [*here give a full description of the lands agreed to be sold*].

If the equivalent to be given is to be by exchange, then, after the word “incumbent” last-mentioned, insert

Exchange.

“[And the said A. B. to be exchanged for certain lands or tithes, &c.]” (*as above.*)

(2) If the equivalent for the lands is to be by exchange, say,

“In consideration of the said sum of £ for the purchase of the said messuage, house, or tenement and buildings, and in consideration of the land [or tithes as the case shall be], so agreed to be exchanged

**BARGAIN AND
SALE.**House, &c.
(for incumbent).To hold to rec-
tor and succes-
sors.Covenant for
title.

Warranty.

or an acknowledgment of which said exchange, *if given in exchange*] the said A. B. hath admitted by an indorsement on the back of this deed, HATH granted, bargained, sold, and by these presents DOTH grant, bargain and sell, [*if by exchange* hath granted, bargained, sold, and exchanged with and] unto the said E. F. and his heirs, ALL [*here insert a full description of the buildings or lands so intended to be conveyed*] with their and every of their rights, privileges, and appurtenances. To HOLD to the said E. F. and his heirs in trust, for the sole use and benefit of the said G. H. and his successors, rectors, vicars, &c. [*as the case may be*] of the said living or benefice for the time being for ever. AND the said A. B. for himself, his heirs, executors and administrators, doth covenant and agree to and with the said E. F. and his heirs, THAT he hath good right to convey the said messuage, house, or tenement and building, lands, &c. [*as the case shall be*], and that he will warrant the same for the use and purposes aforesaid, for ever, free from all claims and incumbrances whatsoever, by, from, or under him, or any of his ancestors. IN WITNESS, &c.

as aforesaid, and intended to be conveyed by him the said A. B., to the said ordinary, patron, and incumbent by indenture of equal date herewith."

No. CLXXVI.

A Bargain and Sale of Timber (1) growing upon an Estate, by the Owner of the Inheritance.

Variations where the vendor is Tenant in tail (2). Also where the sale is of underwood.

THIS INDENTURE of parts, made the
day of , in the year of the reign, &c. and in the
year of our Lord , BETWEEN (*the vendor*) of, &c. of the

(1) Timber, generally speaking, comprises such trees only as are fit to be used in building and repairing houses, as oak, ash, and elm; Co. Lit. 53. a; but the custom of the country will sometimes make those trees timber which in their nature are not so, if, from the scarcity of timber, they are used for building, as horse-chestnut and lime-trees, Duke of Chandos v. Talbot; 2 P. Wms. 605; birch, Countess Cumberland's Ca. Mo. 812; Toth. 151. S. C.; beech, Walton v. Tryon, Amb. 130; and aspen, Wright v. Powle, 1 Gwil. 357. if of the age of 20 years, Hob. 219. Pollards also, if the bodies are sound, and walnut-trees, if of considerable size, will also be estimated as timber: and in a sale of timber, where the trees are valuable, and the parties cannot agree as to the valuation of them as timber, the court of Chancery will send it to be tried, whether by the custom of the country, any and which of them are timber trees; Duke of Chandos v. Talbot, *ubi sup.*

What trees are considered as timber.

(2) A tenant in tail has, equally with the tenant in fee-simple, the power of felling timber and disposing of it as he pleases; with this distinction only, that if he sell the trees when growing on the soil, the purchaser must sever them during the life of the tenant in tail; for if he die before they are cut down, they will belong to his heirs in tail as part of the inheritance, and the purchaser, although obliged to pay the whole sum contracted for, is not allowed to cut down a single tree after the death of the tenant in tail, even though it be half cut down; for as the tenant in tail has power over the inheritance during his own life only, he cannot delegate that power to another for any longer period, and consequently, whatever remains part of the inheritance at the death of the tenant in tail (which timber while standing does, Duke of Chandos v. Talbot, 2 P. Wms. 606,) must necessarily go to the heir to whom the inheritance belongs; see Liford's Ca. 11 Co. 50; Secheverell v. Dale, Pop. 194; Plow. 250.

Vendor tenant in tail.

But purchaser of timber from tenant in tail not entitled to such as remain standing at vendor's death.

**BARGAIN AND
SALE.****Timber.**

Recital of seisin
of vendor.
Contract for
purchase of the
timber.

WITNESS.
That in consi-
deration of the
sum of £

The vendor
bargains and
sells.

one part, and the (*purchaser*) of, &c. of the other part. WHEREAS the said (*vendor*) is seised of an estate for inheritance, in possession, of certain manors, woods, lands, and hereditaments, situated at _____, in the county of _____

AND WHEREAS (1) the said (*purchaser*) hath contracted with the said (*vendor*) for the absolute purchase of certain (2) timber and other trees, now standing and growing thereupon, and particularly specified in the schedule or inventory thereof hereunder written, for the price or sum of £ _____

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and for and in consideration of the sum of £ _____ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*vendor*) in hand well and truly paid by the (*purchaser*), at or before the sealing and delivery of these presents the receipt whereof the said (*vendor*) doth hereby acknowledge [and of and from the same doth fully and absolutely acquit, release, exonerate, and for ever discharge the said (*purchaser*) his executors and administrators, as well by these presents, as by the receipt and acknowledgment for the same sum hereupon indorsed], HE the said (*vendor*) HATH granted, bargained, and sold, and by these presents DOTH grant, bargain, and sell unto the said (*purchaser*), his executors, administrators, and assigns, ALL (3) those

Previous agree-
ment in writing.

(1) If the timber be sold in pursuance of a previous agreement in writing, say,

“AND WHEREAS, by articles of agreement entered into the day of _____, which was in the year _____, the said (*vendor*) agreed with the said (*purchaser*) for the sale to him of certain timber and other trees, to be numbered and set out by the said (*vendor*), and to be paid for at a price or value to be set thereupon by two indifferent surveyors, to be appointed for that purpose in the manner therein mentioned. AND WHEREAS, in pursuance of the said agreement, the said timber and other trees mentioned in the schedule hereunder written, have been set out and valued to the satisfaction of the said (*vendor*) and (*purchaser*), at the sum of £ _____

Underwood.

(2) If the sale be of underwood, say,

“For the purchase of certain coppice or underwood growing thereon, and hereinafter particularly described, for the price or sum of £ _____

Underwood.

(3) If the sale be of underwood, say,

“ALL and singular the woods, underwoods, and trees, now standing and growing in and upon a certain coppice or wood called _____,

BARGAIN AND
SALE.

Timber
(purchaser).

The timber
growing upon
the lands.

timber and other trees now standing and being in a certain wood or coppice, called _____, marked respectively with the letters _____, and containing in number _____, computed in the whole to be about _____ square feet, as the same are more particularly described in a schedule thereof hereunder written; and also all the loppings, tops, shrouds, limbs, and boughs of the said timber and other trees respectively [together with full power and free liberty and privilege of ingress (1), egress, and regress, way and passage for him the said (*purchaser*), his executors, administrators, and assigns, and for his and their agents and servants, with workmen, labourers, horses, carts and carriages, to enter and come in, upon, and through all or any part or parts of the said lands and hereditaments of him the said (*vendor*), or any of them, at all times in the day-time, to view, fell, cut down, saw off, hew, square, work out, cord, stack, cart, and carry away all the said timber and other trees, or any part or parcel thereof, at his and their free will and pleasure, they doing as little damage to the herbage, land, and premises of the said (*vendor*) as may be, and not grubbing up the said trees, nor breaking the soil or ground for the purpose of obtaining the same, but felling or severing the said timber not lower than _____ inches from the bottom or root thereof; and also to sell and dispose of the same in as full and beneficial a manner to all intents and purposes whatsoever, as he the said (*vendor*) could or might have done if these presents had not been made]; and also all the estate, right, title, interest, property, claim, and

and hedgerows thereunto adjoining, containing by admeasurement _____ acres, be the same more or less; except and always reserved unto the said (*vendor*), his heirs and assigns, the soil of the same coppice wood, and all timber trees, and trees likely to become timber, and lopped or pollard trees, standing and growing dispersedly within or amongst the said coppice or underwood hereby assigned, and the usual and accustomed wavers and standils there to be left, as are usually left in cases of a like nature.

By the 35 Hen. 8. c. 17, it is enacted that in every case of coppice felled under twenty-four years' growth, there shall be left twelve standils or storers of oak; and if there be not so many, then of some other kind, as elm, ash, asp, or beech, under a penalty of 3s. 4d. for each standil short of that number.

Stores to be left
on felling cop-
pice under 24
years' growth.

(1) It is not material that the grant of ingress and regress for the purpose of felling and carrying away the trees should be inserted, as a right of entry upon the lands of the vendor is incident to the grant of the trees, as in all other cases where entry is requisite to obtain the things sold; see *Liford's Ca.* 11 Co. 52.

Grant of ingress
not material in
sale of timber.

**BARGAIN AND
SALE.**Timber
(purchaser).To hold to the
purchaser abso-
lutely.Covenant by
vendor that he
has a right to
dispose of the
timber.That the pur-
chaser shall
quietly enjoy.Covenant by
purchaser to

demand whatsoever, both at law and in equity, of him the said (*ven-
dor*), of, in, or to the said timber and other trees, toppings, and
premises aforesaid. AND also full power and free liberty and pri-
vilege to make and dig saw pits in or upon any convenient part of
the said premises, and there to saw and cut all or any part of the
trees, as he the said (*purchaser*) shall think fit. TO HAVE AND TO
HOLD the said timber and other trees, lops, tops, and shrouds, and
other the premises hereby granted, bargained, and sold, or mentioned
or intended so to be, with their and every of their appurtenances,
unto and by the said (*purchaser*), his executors, administrators, and
assigns, absolutely to and for his and their own proper use and bene-
fit, and as his and their own proper goods, chattels, and effects.
AND the said (*vendor*) doth hereby for himself, his heirs, executors,
and administrators, covenant, promise and agree with and to the said
(*purchaser*), his executors, administrators, and assigns, that for and
notwithstanding any act, deed, matter, or thing whatsoever, made,
done, occasioned, or knowingly suffered or omitted by him the said
(*vendor*), or any of his ancestors, to the contrary, he the said (*vendor*),
at the time of the sealing and delivery of these presents, hath in
himself full power and lawful and absolute right and title to grant,
bargain, sell, and dispose of the said timber and other trees and pre-
mises hereby sold and assigned, or mentioned or intended so to be
unto the said (*purchaser*) in the manner aforesaid. AND that he the
said (*purchaser*), his executors, administrators, and assigns, imme-
diately upon the sealing and delivery of these presents, and at all times
and from time to time hereafter, within the space or period of
calendar months next after the date of these presents, shall and law-
fully may peaceably and quietly have, hold, take, receive, and enjoy
all and singular the said timber and other trees and premises hereby
granted, bargained, and sold, or mentioned or intended so to be,
with their and every of their appurtenances, and fell, hew, saw off,
cut down, and carry away the same, without any manner of hind-
rance, interruption, claim, or demand whatsoever, of, from, or by him,
the said (*vendor*), his heirs, executors, or administrators, or any per-
son or persons now or hereafter rightfully claiming any estate, right,
title, charge, or interest by, from, through, under, or in trust for him,
them, or any of them (1). AND the said (*purchaser*) doth hereby

Vendor tenant in
tail.If tenant in tail
die before seve-

(1) Where the vendor is tenant in tail, the timber must be severed during his life-time; it will be proper therefore, in that case, that the following proviso should be inserted;

"AND moreover, that in case the said (*vendor*) shall happen to

for himself, his executors, administrators, and assigns, covenant, promise, and agree with and to the said (*vendor*), his heirs and assigns, in the manner following, (that is to say) that the said (*purchaser*), his executors and administrators, shall and will, within the said space or period of calendar months from the date of these presents, fell and carry away the said timber and other trees, lop-pings, and premises hereby bargained and sold, or mentioned or intended so to be; and at his or their own proper costs and charges, fence, amend, and repair all the hedges and fences in and about the premises, in all such places as shall be broken, trodden down, or otherwise unavoidably damaged or destroyed in felling and severing the said timber and other trees, he and they taking sufficient hedge-bote from the said grounds for the doing of the same. IN WITNESS, &c.

BARGAIN AND
SALE.*Timber*
(*purchaser*).fell the trees in
the given time.And repair
hedges, &c.

depart this life at any time before the said trees so hereinbefore bargained and sold, or mentioned or intended so to be, shall have been felled and severed from the inheritance of the same premises, unless the said (*purchaser*) shall or may be lawfully prevented from taking and carrying away the same, according to the true intent and meaning of these presents, then and in such case the executors or administrators of the said (*vendor*) shall, within the space of after his decease, pay or allow unto the said (*purchaser*), his executors, administrators, and assigns, the value of such or so many of the said trees so hereby bargained and sold, as shall then remain unfelled and unsevered, after the rate and according to the price or sum at which the same have been now sold."

rance, part of
purchase money
to be returned.

SCHEDULE

ABOVE REFERRED TO.

* * * A bargain and sale of timber or other personally need not be enrolled, as the statute 27 Hen. 8. c. 16. extends only to bargains and sales of estates of inheritance, enuring to pass a freehold. If, however, timber be conveyed by the same bargain and sale with freehold lands it will not pass without enrolment. See Liford's Ca. 11 Co. 52.

Need not be en-
rolled.*Ad-valorem* Stamp.

Stamp.

BILL OF SALE.

Goods
(*purchaser or*
mortgagee).

No. CLXXVII.

A Bill of Sale (or Bargain and Sale) of Goods, &c. (1), for securing the Payment of a Sum of Money.

Variations, where it is given as a Collateral Security only, and is accompanied by a Bond or Warrant of Attorney. Where in satisfaction of Rent owing. Also where it is made to a Purchaser.

THIS INDENTURE, made the day of , in the
year of the reign, &c. and in the year of our Lord 18 , BETWEEN
(*the bargainor*) of, &c. of the one part, and (*the bargainee*) of, &c.
of the other part. WHEREAS (2) the said (*bargainor*) is indebted
Recital of debt. unto the said (*bargainee*) in the sum of £ , (3) and being at

Bill of sale is of
personal, and
bargain and sale
of real property.

(1) A bill of sale, and a bargain and sale, whether of goods or other
personalities, are precisely of the same kind as to their operation and
technical import; but where the instrument has reference to things of a
real nature, or such as, in the phrase of Mr. Justice Blackstone, "savour
of the realty," it is usually styled a *bargain and sale*; and where to things
merely personal, as household goods, &c. a *bill of sale*.

Sale to purcha-
ser.

(2) If the bill of sale be made to a purchaser, say,

"Whereas the said (*purchaser*) hath contracted with the said
(*vendor*) for the absolute purchase of the several goods, chattels, and
furniture and effects mentioned in the inventory or schedule thereof,
hereunder written, at or for the price or sum of £ ."

Bond or warrant
of attorney.

(3) If the bill of sale be intended to accompany a bond or warrant of
attorney as a collateral security, say,

Recital of bond.

"Whereas the said (*debtor*) hath executed a bond, or obligation,
[or warrant of attorney] in writing under his hand and seal, bearing
or intended to bear even date with these presents, in the penal sum
of £ , with a condition [or defeasance] thereunder written,
for making void the same on payment of the sum of £ ,
and interest after the rate of 5 per cent. per annum, on the
day of now next ensuing. AND WHEREAS it hath been

present unable to pay (1) the same hath agreed to make such assignment or bill of sale to him of the goods, chattels, furniture, and effects mentioned in the schedule hereunder written, for the better securing the payment thereof, as hereinafter is expressed. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ , so justly due and owing to the said (*bargainee*) by the said (*bargainor*) at the time of the sealing and delivery of these presents, as hereinbefore is mentioned (which the said (*bargainor*) doth hereby expressly admit and acknowledge), [or for and in consideration of the sum of of lawful current money of England to the said (*bargainor*) in hand well and truly paid by the said (*bargainee*) at the time of the execution of these presents, the receipt whereof is hereby acknowledged,] HE the said (*bargainor*) HATH granted, bargained, and sold, and by these presents BOTH grant, bargain, and sell unto the said (*bargainee*), his executors, administrators, and assigns, ALL (2) and singular the household furniture, beds, bedding, plate, china, linen, glass, books, pictures, and other the goods, chattels, and effects mentioned or de-

BILL OF SALE.

Goods
(purchaser or
mortgagee).

WITNESS.

That in consideration of the
sum owing,

agreed that for better securing the payment of the said sum of £ , the said (*debtor*) shall execute such bill of sale of the goods and effects mentioned in the schedule hereunder written, as hereinafter is expressed."

(1) If the sale be in satisfaction of rent owing by the bargainor, say, Rent due.

"AND WHEREAS the said (*bargainor*) is indebted to the said (*bargainee*) in the sum of £ , for one year and a quarter's rent ending at last, for the messuage and farm, situated at and which the said (*bargainor*) is unable to pay. AND WHEREAS the household goods and furniture, and all other the goods and chattels, utensils, implements, effects, and things belonging to the said (*bargainor*) upon the said premises, have been appraised and valued by two sworn appraisers at the price and sum of £ , as the full value thereof. AND WHEREAS the said (*bargainee*), in order to save the trouble and expense of a distress, hath agreed to accept an assignment from the said (*bargainor*) of the said household goods and furniture which are hereinafter mentioned in full satisfaction of the said debt or sum of £ , due to him the said (*bargainee*). Now THIS INDENTURE WITNESSETH that," &c. as above.

(2) If the assignment is of a ship's cargo, say,

"All those and such the goods, wares, merchandize, and cargo, as and which in or by one certain bill of lading bearing date the

Cargo.

BILL OF SALE.

*Goods
(purchaser or
mortgagee).*

the debtor bar-
gains and sells
the furniture.

To hold to the
creditor.

Proviso for re-
demption.

scribed in or by the inventory or schedule thereof hereunder written or hereunto annexed, and all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said (*bargainor*) of, in, or to the same and every of them respectively (1), TO HAVE AND TO HOLD and take and enjoy the said household and other furniture, goods, chattels, and effects, and all and singular other the premises hereinbefore bargained and sold, or mentioned or intended so to be, with their and every of their rights, members and appurtenants, unto and by the said (*bargainor*), his executors, administrators, and assigns, to and for his and their own proper use and benefit (2), subject nevertheless to the proviso for redemption of the said premises hereinafter contained; (that is to say) PROVIDED ALWAYS, and it is hereby agreed between the said parties to these presents, that if the said (*bargainor*), his executors, administrators, or assigns, or any of them, do and shall well and truly pay or cause to be paid unto the said (*bargainee*) or his certain attorney, executors, administrators, or assigns, the sum of £ , of law-

day of , are mentioned to have been shipped and being on board the ship , A. B. commander, and then in the River Thames (*or as the case may be*), bound for and consigned to the (*assignor*), and which said goods, wares, merchandize, and cargo, are or are mentioned to be more particularly specified by and numbered and marked in the margin of the said bill of lading and in triplicates thereof therein referred to, as by reference, &c. AND all other the goods, wares, merchandize, and cargo in or on board the said ship, of or belonging to the said (*assignor*), and which said bill of lading is or is intended to be assigned unto the said (*assignee*) by indorsement thereupon, according to the custom of merchants, and which are also or are intended to be hereunto annexed."

Sale to a pur-
chaser.

(1) If the bill of sale be to a purchaser, add,
"AND of which said goods, furniture, and effects, the said (*vendor*) hath this day put the said (*purchaser*) in actual possession, by delivering unto him a chair, in the name and in lieu of the whole thereof." See *post.* p. 56, note *.*.

Rent.

(2) If the sale be for rent arrear, say,
"In full satisfaction and discharge of the said rent or sum of £ , so due and owing to him the said (*bargainee*) by the said (*bargainor*) as aforesaid, and all subsequent and accruing arrears thereof."

ful, &c. on the of , with interest for the same after the rate of £5 per cent. per annum in the mean time, by even quarterly payments, then these presents, and every clause, article, condition, and thing herein contained, shall cease, determine, and be utterly void; otherwise to be and remain in full force, virtue, and effect. AND the said (*bargainor*), for himself, his executors, and administrators, all and singular the said goods and merchandizes unto the said (*bargainee*), his executors, administrators, and assigns, against him the said (*bargainor*), his executors, administrators, and assigns, and against all and every other person or persons whatsoever, shall and will warrant and for ever defend by these presents: [* AND the said (*bargainor*) for himself, his executors, and administrators, doth covenant and grant to and with the said (*bargainee*), his executors, administrators, and assigns, by these presents in manner following; (that is to say,) that he the said (*bargainor*) his executors and administrators, shall and will well and truly pay or cause to be paid unto the said (*bargainee*), his executors, administrators, or assigns, the said sum of £ , at the time and in manner aforesaid, according to the true intent and meaning of these presents. AND also that if the said (*bargainor*), his executors or administrators, shall make default in payment of the said £ or any part thereof, on the said day of , hereinbefore for that purpose mentioned, then the said (*bargainee*), his executors, administrators, and assigns, shall and may peaceably and quietly have, hold, and enjoy to his and their own proper use and behoof for ever the said goods, chattels, effects, and premises, by these presents bargained and sold, or otherwise assured, or intended so to be, and every part and parcel thereof, with all and singular the appurtenances, without any lawful let, suit, trouble, molestation, or denial of the said (*bargainor*), his executors or administrators, or any other person or persons whatsoever. AND the said (*bargainee*), for himself, his executors, administrators, and assigns, doth covenant, promise, and agree to and with the said (*bargainor*), his executors, administrators, and assigns, by these presents, that he the said (*bargainee*), his executors, administrators, and assigns, shall and will immediately upon the receipt of the said sum of £ , according to the true intent and meaning of the condition aforesaid, upon the request of the said (*bargainor*), well and truly deliver unto the said (*bargainor*), his executors, administrators, or assigns, all and every the goods, chattels, and effects enumerated or mentioned in the inventory or schedule hereunder written or hereunto annexed, in as good plight and

BILL OF SALE.

Goods
(purchaser or
mortgagee).

Proviso for redemption.

Warranty.

Covenant to pay
the debt.

Quiet enjoyment
on default.

And re-delivery
on payment.

BILL OF SALE.Goods
(purchaser or
mortgagee).

condition as the same and every of them respectively now are and is.] IN WITNESS, &c.

INVENTORY OR SCHEDULE

ABOVE REFERRED TO.

Delivery of possession requisite in sale of personalties.

* * A bill of sale may be made either absolutely to a purchaser, or conditionally by way of mortgage or pledge for securing the payment of a sum of money; when conditional no delivery of the possession is requisite; but when absolutely made, actual possession of the property must be delivered to the purchaser, or the sale will be void, as against creditors; it being a general rule, in the transfer of personalty, that the possession must accompany and follow the deed; see *Edwards v. Harben*, 2 Durnf. and E. 587; *Dutton v. Morrison*, 17 Ves. 197; *Steele v. Browne et al.* 1 Taunt. 381; *Paget et al. v. Perchard*, 1 Esp. 205; *Wordall v. Smith*, 1 Campb. 333; but where the trustee of the separate estate of a married woman purchased effects under an execution issued against the husband it was held good, although no change of possession took place, *Cross v. Glode*, 2 Esp. 574; *Cadogan v. Kennett*, Cowp. 432; *Derby v. Smith*, 8 Durnf. and E. 82; *Lady Arundell v. Phipps and Taunton*, 10 Ves. 139; because the husband is in such case considered to be in possession simply as residing with his wife, and not as owner of the goods; and so where it is made by the sheriff under an execution, in which case the sale is notorious to all the neighbourhood, *Kidd v. Rawlinson*, 2 Bos. & Pul. 53; and see *Joseph v. Nipam*, 1 Moore, 189; but an assignment of chattels or personal interests will in all cases be valid as against the vendor himself and all claiming under him, *Hawes v. Leader*, Cro. Jac. 270; *Shep. Touch.* 66; although unaccompanied by delivery of possession, *Steele v. Browne and Parry*, 1 Taunt. 381.

BILL OF SALE:

Ship
(*purchaser or*
mortgagee).

No. CLXXVIII.

A Bill of Sale (1) of a Ship at Sea, by a sole Owner.

Variations where the Vendor is Part Owner. (2) Where the transfer is by way of Mortgage. (3)

THIS INDENTURE, made the day of , [* in the
year of the reign, &c. and] in the year of our Lord 18 , Be-

(1) This bill of sale of a ship is requisite only where such ship is at sea, as the property in the ship, if in port, may be transferred by an indorsement on the certificate of registry; see *post*. p. 63. note, and *Hubbard v. Johnstone*, 3 Taunt. 220.

Bill of sale of ship requisite only when ship at sea.

A deposit of the documents will not alone confer even an equitable lien, *Taylor v. Kinlock*, 1 Starkie, 175.

* And if the ship be at sea, a delivery of the grand bill of sale will be equivalent to the delivery of the ship itself, this being the only delivery of which the subject matter is capable; see *Atkinson v. Maling*, 2 Durnf. and E. 462; *Walker v. Preswick*, 2 Ves. 622; and see also *Bourne v. Dodson*, 1 Atk. 154.; but an indorsement of the certificate of registry must be made within ten days after the return of the ship to port, *Dinon v. Awart*, 3 Mer. 322.

Delivery of bill of sale sufficient if ship at sea, equivalent on sale of ship, with delivery of ship itself.

(2) * It was formerly supposed that the registry acts prevented a part of a ship from being transferred, because the form of indorsement required by these acts to be observed contains the words, "all my (or our) right, share, and interest," and makes no provision for a transfer of part only; but it is now held that the legislature only meant, that the indorsement should shew what was the interest conveyed, and a sale of part only of a ship is now therefore determined to be equally valid with the sale of the whole, provided the quantity of interest actually parted with be correctly stated in the indorsement; *Underwood v. Miller*, 1 Taunt. 387.

(3) * It has been a generally received opinion, that since the registry acts there cannot be a valid mortgage or conditional sale of a ship, and that such mortgages are merely made upon honour (the form of the bill of sale mentioned in the act being absolute, and without any defeasance), and cannot be sustained either at law or equity; but there seems to be no foundation for this opinion, which has arisen probably from the circumstance that the form of indorsement required by the act is adapted only to a total and absolute sale, and makes no provision for a transfer by way of mortgage. But as the officers of the Custom House will not permit any entry to be made but in this prescribed form, various modes have been adopted to effectuate this purpose; the mode here adopted is that recommended by Sir T. Plummer, (vide in *Thompson v. Smith*, 1 Madd. 412.) "The mortgage may be made

Conditional sale, or mortgage.

BILL OF SALE.

Ship
(*purchaser or*
mortgagee).

Recital of own-
ership.

TWEEN (*the bargainor*) of, &c. of the one part, and (*the bargainee*) of, &c. of the other part. WHEREAS the said (*bargainor*) is the owner (1) or proprietor of a certain ship or vessel called the _____, of the burthen of _____ tons, now on her voyage to _____, whereof _____ is master. AND WHEREAS the said ship or vessel hath been duly registered, pursuant to act of Parliament, a copy

by the usual bill of sale of the ship, containing in the same instrument a defeazance or condition of re-transfer, on payment of the mortgage money. This bill of sale must contain the recital of the certificate as the act directs, and must be fully endorsed on the certificate of registry if the ship be in port, or if at sea a full copy of it must be transmitted to the Custom House. The form of endorsement will be the one prescribed by the act, but, with the addition of the defeazance to express the true nature of the contract between the parties, there is nothing in the act to prevent such an addition being made. In the subsequent forms to be observed at the Custom House the defeazance will probably not be noticed either in the entry endorsed or in the memorandum made in the book of registers, but registered as by an absolute bill of sale (*but see now 6 Geo. IV. c. 110. post. p. 64*), neither the mortgagor nor the mortgagee can suffer by that omission, for the statutes invalidate the transfer only in the event of the neglect of the prescribed requisites by *the parties*, and not for any neglect by *the public offices*. In the event of any dispute of the title in a court of justice, the proper evidence of title will be the original documents themselves, the mortgagor's right to call for a re-transfer will appear from the bill of sale fully indorsed on the certificate, if the ship be in port, or if at sea by a full copy transmitted to the Custom House, and I see no ground on which that right can be resisted." See more on this subject, *post*. "HYPOTHECATION." Also *post*. p. 64. notes.

Bargainor part
owner.

(1) * If the bargainor be part owner only, say,

"Whereas the said (*bargainor*) is the owner or proprietor of a part or share of and in a certain ship or vessel," &c. *as above*.

6 Geo. IV.

* As to the bargainor being part owner only of the ship, it is to be noticed that by the act of 6 Geo. IV. c. 110 (sec. 32), it is enacted, that the property in every ship or vessel, of which there are more than one owner, shall be taken and considered as divided into 64 parts or shares; and the proportion held by each owner, shall be described in the registry as being a certain number of 64 parts or shares; and that no person shall be entitled to be registered as owner of any ship or vessel, in respect of any proportion thereof, which shall not be an integral 64th part or share of the same, except such owners be copartners, in which case the proportional interest of each need not be distinguished. And by the same act, (sec. 33), it is declared that no greater number than thirty-two persons shall be entitled to be legal owners at one and the same time, of any ship or vessel as tenants in common, or to be registered as such, except in regard to the equitable title of minors, heirs, legatees, creditors, or others, exceeding that number, duly represented by, or holding from any of the persons within the said number, registered as legal owners. Also, as to joint-stock proprietors of any ship

of the certificate of which registry is as follows (that is to say) (1), "In pursuance of an act passed in the sixth year of the reign of King George the Fourth, entitled an act for the registry of British vessels, (*the owner*) of, &c. [*describing the names, occupation and residence of the subscribing owner or owners*], having taken and subscribed the oath, and caused sufficient security to be given as required by the said act (2)," &c. [*proceeding as in the certificate of registry*]. AND WHEREAS (3) the said (*bargaine*) hath contracted with the said (*bargainor*) for the absolute purchase of the said ship or vessel, with the appurtenances thereunto belonging, at or for the price or sum of £ , Now THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and also for and in consideration of the sum of £ , of

BILL OF SALE.

Ship
(purchaser or mortgagee).

Recital of certificate of registry.

Contract for purchase.

WITNESS.
That in consideration of the purchase money,

or ships having appointed not less than three persons to be trustees of the property therein, when such trustees may be registered as owners on behalf of the company of proprietors.

(1) *This recital of the certificate of registry, in substance, is essential to the validity of the deed, the act 6 Geo. IV. c. 110. declaring, "that when and so often as the property in any ship or vessel belonging to any of his Majesty's subjects shall be sold to any other or others of his Majesty's subjects, in whole or in part, the same shall be transferred by bill of sale or other instrument in writing, reciting the certificate of registry of such ship or vessel, or the principal contents thereof, and that otherwise such transfer shall not be valid or effectual for any purpose whatever, either at law or in equity. But it is further declared, that the bill of sale shall not be void (as it was holden to be under the former registry acts, *Brewster v. Clarke*, 2 Mer. 75; *Thompson v. Leake*, 1 Mad. 39), by reason of any error in the recital, or by the recital of any former certificate of registry, instead of the existing certificate, "*provided the identity of the ship or vessel therein included be effectually proved thereby*,"—and although the instrument be an executory agreement only for the sale of a ship, it must contain a recital of the certificate of registry. *Biddell v. Leader*, 1 Bar. and Cresw. 327.

Certificate of registry must be recited.

(2) This security is a bond given by the master and such of the owners as attend at the time of obtaining the certificate, with a penalty proportioned to the tonnage of the vessel, not to sell, lend, or in any manner dispose of the certificate, but to use it solely for the service of the ship or vessel for which it is granted; and on the return of the vessel, or its being captured or lost, to deliver up the same, if preserved, to the officer appointed by the act to receive them;—for the particular form of which, see *post*. "BOND."

Bond to be given not to part with certificate of ship's registry.

*If the transfer be by way of mortgage, say,

Mortgage.

"AND WHEREAS the (*mortgagor*) has agreed with the said (*mortgagee*) for the loan to him of the sum of £ , upon the security of the said ship or vessel."

(3) If the bargainor be part owner only, say,

Bargainor part owner.

"AND WHEREAS the said (*purchaser*) hath contracted with the said (*bargainor*) for the absolute purchase of the said part or

BILL OF SALE.

Ship
(purchaser or
mortgagee).

the bargainor
bargains and
sells

the ship.

lawful money of the United Kingdom of Great Britain and Ireland, to the said (*bargainor*) in hand well and truly paid (1) by the said (*bargainee*), at or immediately before the sealing of these presents, the receipt whereof the said (*bargainor*) doth hereby acknowledge, [and of and from the same, and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*bargainee*), his executors and administrators, and also the said ship or vessel, as well by these presents as by the receipt or acknowledgment for the same sum hereupon endorsed], HE the said (*bargainor*) [HATH granted, bargained and sold, and by these presents] DOTN grant bargain, and sell unto the said (*bargainee*), his executors, administrators, and assigns, ALL (2) that the said good ship or vessel called the _____, whereof _____ is master, now on a voyage to _____ (or as the case may be), together with all and singular the masts, sails, sail-yards, anchors, cables, standing and running rigging, ropes, cord, cannon, guns, fire-arms, gunpowder, shot, artillery, ammunition, provision, tackle, boats, oars, furniture, materials, appendages and appurtenances whatsoever, to the said ship or vessel

share of him the said (*bargainor*), of and in the said ship or vessel, with the appurtenances thereunto belonging, at or for the price or sum of £ _____."

Lien for consideration.

(1) *The vendor upon the conveyance of an estate has an equitable lien for the purchase-money, if not paid; see *ante*, MOD. PREC. p. 124, n. (7); but in the case of a ship, he has no such lien, for if the requisites of the registry act be complied with, the title of the purchaser will be good against all the world; see *Ex-parte Howton*, 1 Rose, 177. So, on the other hand, should the purchaser be induced to pay his money without taking a transfer of the ship in the mode prescribed by the acts, he can have no remedy either at law or in equity, the title on the registry being conclusive; 5 T. R. 709. "For", per Lord Kenyon, "if an equitable interest in a ship could prevail in contradistinction to a legal interest, it would repeal the wise provisions of an act which has proved highly beneficial to the interests of this country." *Hilbert v. Rolliston*, 3 Brow. 571. and see *Mastairs v. Greeispie*, 11 Ves. 625.

*A bill of sale of a ship should state the consideration-money paid: it is not however *void*, though it omit to set forth the true consideration, (nor if not stamped with an *ad-valorem* stamp), but the parties are liable to a penalty; *Robinson et al. v. Macdonald et al.* 5 Maul. and Sel. 226.

Bargainor part owner.

(2) If the bargainor be part owner only, say,
"All that one full and equal _____ part or share, the whole into equal parts or shares being considered as divided, of and in the said good ship or vessel called the _____, now on a voyage to _____, whereof _____ is master, together with one full and equal part of all and singular the masts," &c. *as above*.

belonging or in any wise appertaining, and all the estate, right, title, interest, trust, possession, property, claim, and demand whatsoever, both at law and in equity, of him the said (*bargainor*), of, in, or to the said ship or vessel, hereby assigned, or mentioned or intended so to be. TO HAVE AND TO HOLD (1) the said ship or vessel, and all and singular other the premises hereby assigned, or mentioned or intended so to be, with their and every of their appurtenances, unto and by the said (*bargainee*), his executors, administrators, and assigns, absolutely to and for his and their own proper use and benefit. (2) AND the said (*bargainor*), for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said (*bargainee*), his executors, administrators, and assigns, in the manner following (that is to say), that (3) [for and notwithstanding any act, deed, matter, or thing whatsoever, made, done, occasioned, or knowingly suffered, or omitted by him the said (*bargainor*) to the contrary], he the said (*bargainor*), at the time of the sealing and delivery of these presents, is the true and lawful owner, possessor, and proprietor (4) of the said ship or vessel, and premises, hereby assigned, or mentioned or intended so to be. AND that he the said (*bargainor*) now hath in himself full power, and lawful and absolute right, title, and authority to grant, bargain, and sell and assure the same unto the said (*bargainee*), his executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND that the said (*bargainee*), his executors, administrators, and assigns, shall and lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy (5) the said ship or

BILL OF SALE.

Ship
(*purchaser or mortgagee*).

To hold to the bargainee absolutely.

Covenant by bargainor that he is rightful owner of the ship,

and hath right to sell the same,

That the bargainee shall quietly enjoy.

(1) If the bargainor be part owner only, say,
"TO HAVE AND TO HOLD the said one full and equal part or share of the said ship or vessel, and all and singular other the premises," &c. *as above*.

Bargainor part owner.

(2) *If the transfer be by way of mortgage, add
"Subject nevertheless to redemption, as hereinafter is mentioned, (that is to say) see *ante*, p. 54, and *post*. "HYPOTHECATION."

Mortgage.

(3) *If the transfer be to a mortgagee, omit the words within brackets here and in the subsequent part of the precedent.

Mortgagee.

(4) If the bargainor be part owner only, say,
"The true and lawful owner, possessor, and proprietor of a part or share of or in the said ship or vessel, and premises hereby assigned."

Bargainor part owner.

(5) If the bargainor be part owner only, say,
"The said part or share of and in the said ship or vessel."

Bargainor part owner.

DEED OF SALE.Ship
(purchaser or
mortgagee).Free from in-
cumbances.Further assu-
rance.

vessel, and all and singular other the premises hereby assigned, or mentioned or intended so to be, to and for his and their own use and benefit, without any manner of hindrance, interruption, molestation, claim, or demand whatsoever [of, from, or by the said (*bargainor*), or any person or persons now or hereafter rightly claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, or upon the said ship or vessel, and premises, or any part thereof, from, under, or in trust for him, them, or any of them.]

AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise, by and at the expence of the said (*bargainor*), his executors or administrators, of and from all and all manner of former and other bargains, sales, gifts, grants, seizures, debts, judgments, conditions, executions, bottomries, titles, charges, and incumbrances whatsoever, had, made, done, suffered, or occasioned by him the said (*bargainor*), or any other person or persons [claiming or entitled by, from, under, or in trust for him the said (*bargainor*), his executors or administrators]. AND MOREOVER, that he the said (*bargainor*), his executors and administrators, and all and every such person and persons claiming, or to claim from, by, or under them, or either of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the cost and expence in all things of the said (*bargainee*), his executors, administrators, and assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, deeds, and assurances, matters and things whatsoever, for the better or more satisfactorily conveying and assuring (1) the said ship or vessel, and premises, unto the said (*bargainee*), his executors, administrators, and assigns, in the manner hereinbefore mentioned, and according to the true intent and meaning of these presents, as he the said (*bargainee*), his executors, administrators, and assigns, or his or their counsel in the law, of the degree of a barrister, shall advise and require; [so that the person or persons who shall be required to make or execute the same be not obliged to go from his or their then place or respective places of abode for that purpose, without a reasonable and sufficient sum

Bargainor part
owner.

(1) If the bargainor be part owner only, say,
“The said one full part or share of and in the said ship or vessel.”

being previously paid or secured to be paid to him or them, for or in respect of his or their time, trouble, and expences.] IN WITNESS, &c.

BILL OF SALE.

Ship
(*purchaser or*
mortgagee).

* * If any alteration be made in the property of any ship or vessel, in the same port to which she belongs, an indorsement to that effect (1) is to be made on the certificate of registry, and signed by the person making the same, and a copy be delivered to the registering officer, who is required to make entries of it, on the affidavit on which the original certificate was obtained, and in the book of registry, and to give notice to the Commissioners of Customs; and upon these requisites being complied with, the sale will be good without a bill of sale, *Richardson v. Campbell*, 5 B. & Ald. 196. and equity will not grant relief. See *Speldt v. Lechmore*, 13 Ves. 588. Also *Robinson v. Macdonnell*, 2 Barn. & Ald. 134.

Assignment of
ship's cargo to
be indorsed on
certificate of
registry.

If, however, the vessel be at sea, or in any other port, when such alteration in the property shall be made, so that an indorsement on the certificate cannot be made, then the act (assuming that the certificate is always with the ship) substitutes the bill of sale to be made in lieu of the indorsement on the certificate, but requires the same delivery of a copy, and the same entries and notice thereof, as is required for the indorsement of the certificate by the preceding section; but, within ten days after the vessel's return to her port, the indorsement on the certificate shall be made as required in the first instance.

Unless the ves-
sel at sea, when
a bill of sale
necessary.

* But the ship-register acts, it has been determined, do not apply to a transfer of property by operation of law, such as from the commissioners to the assignees of bankrupts, unless the transfer be of the cargo. See *Blonam v. Hubbard*, 5 East, 407. For these acts, so far as they apply to defeat titles and create forfeitures, are to be construed strictly as penal, not literally as remedial laws, per Wood, Bar. and Heath, Just. *Hubbard v. Johnstone*, 3 Taunt. 220.

* By 6 Geo. 4. c 110, it is enacted, that every bill of sale, or other instrument in writing, in order to its being valid to pass the property in any ship or vessel, or in any share thereof, or for any other purpose, shall be produced to the collector and comptroller of the port at which

Bill of sale to be
produced to col-
lector.

(1) The form of the indorsement, as required by the act, is as follows:

Form of in-
dorsement.

"BE IT REMEMBERED that I (*the owner*) of, &c. have this day sold and transferred all my right, share, or interest in and to the ship or vessel [*insert her name*] mentioned in the within certificate of registry, unto (*the bargainee*), of, &c. [*if by way of mortgage*] for securing the sum of and interest, as in the certificate thereof doth appear." WITNESS my hand this day of

Signed in the presence of

A. B. }
C. D. } *Two witnesses.*

BILL OF SALE.Ship
(purchaser or
mortgagee).Mortgage.

such ship is registered, or to the collector and comptroller of any other port at which she is about to be registered *de novo*, as the case may be, and duly entered by him in the proper books of registry, as directed by the act. See also sec. 38. 40. 42. and *post.* Vol. III. "REGISTRY."

*By the same act (sec. 45), provision is made for registering assignments of ships for the security of debts, which also declares that mortgagees, transferees, or trustees for them shall not be deemed owners, nor the mortgagees cease to become owners, except so far as to make such ship available for the purpose for which the assignment was made.

Bankruptcy.

*Further (sec. 46.), that no such mortgage or assignment, after being duly registered, shall be affected by a subsequent act of bankruptcy of the assignor, although he may still be in possession, and reputed owner of the ship.

Stamp.

*. * By 6 Geo. 4. c. 41, all stamp duties payable in respect of bills of sale, or other instruments for the disposition, either absolutely, by way of mortgage, or otherwise of any ship or vessel, or any part of or share, or property therein, are declared to cease.

*And the act 6 Geo. 4. c. 110, declares, that if it shall happen that the property of any owner of a ship, cannot be reduced by division into any number of integral 64th parts, the owners of such fractional parts above such integral, may transfer the same to one another, or jointly to any new owner by memorandum upon their respective bills of sale, or by a fresh bill of sale without such transfer being liable to stamp, so that the right of such owner has been duly registered. .

BILL OF SALE.

Ship
(moieties).

No. CLXXIX.

**A Bill of Sale (concise) of a Ship from Two Persons, of their respective parts.*

KNOW ALL MEN BY THESE PRESENTS that we (owner of one moiety) of, &c., owner of one full moiety or half-part of and in all the good ship or vessel called the , and (owner of the other moiety) of, &c. owner of the other like moiety or half-part of the said good ship or vessel, for and in consideration of one full and equal half-part or moiety of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland (being the purchase money for the said ship), to each of us in hand paid at or before the sealing and delivery of these presents, by (assignee) of, &c., the receipt whereof we do hereby severally acknowledge, and of and from the same do severally acquit, release and for ever discharge the said (assignee), his executors and administrators, and every of them, for ever, by these presents, HAVE severally granted, bargained, sold, assigned, transferred and set over, and by these presents Do severally grant, bargain, sell, assign, transfer and set over unto the said (assignee), his executors, administrators and assigns, two several full and equal moieties or half-parts of and in all the aforesaid ship or vessel called the , of the burthen of tons or thereabouts, now lying in and whereof we respectively are the true and only owners; and also of and in all and singular the masts, &c. (1) which said ship or vessel has been duly registered pursuant to an act of Parliament for that purpose; and a copy of the certificate of such registry is as follows: "In pursuance, &c. (2), To HAVE AND TO HOLD the said several moieties or half-parts of and in

WITNESS
Grantors assign, &c.

To hold to assignee absolutely.

(1) See general words, *ante*, p. 61.
(2) See *ante*, p. 59. n. (1).

DEED OF SALE.Ship
(moieties).

Covenants.

the said ship or vessel, and all and every the rights and appurtenances thereof and thereto, unto and for the proper use and benefit of him the said (*assignee*), his executors, administrators and assigns for ever. AND they the said (*assignors*) severally and respectively, and not jointly, nor one of them for the other of them, nor for the acts or defaults of the others, but each for himself only, his executors and administrators, do and doth covenant, promise and declare to and with the said (*assignee*), his executors, administrators and assigns, that they the said (*assignors*) respectively have, at the time of the sealing and delivery of these presents, full power and absolute authority to grant, convey and assure the said several moieties or half-parts of them the said (*assignors*) respectively, in the said ship or vessel, with the appurtenances, unto the said (*assignee*), his executors, administrators and assigns, in the manner and form aforesaid; and that their said several moieties or half-parts of and in the said ship or vessel, with the appurtenances, shall from henceforth for ever be and remain unto and for the said (*assignee*), his executors, administrators and assigns, free and clear of and from all charges, liens and incumbrances by them respectively made or knowingly suffered. IN WITNESS, &c.

. See notes and observations, *ante*, p. 64.

BILL OF SALE.

Merchandise
(shipped).

No. CLXXX.

**A Bill of Sale of a part of Goods on board a Ship (1), in consideration of a Debt.*

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN (*assignor*) of, &c. of the one part, and (*assignee*) of, &c. of the other part. WHEREAS the said (*assignor*), Recital.
on or about the day of last past, shipped on board the ship or vessel called the , whereof is master, and which is riding at anchor in the river , and bound for , the goods, wares and merchandizes hereinafter mentioned and described. AND whereas the said (*assignor*) is justly indebted to the said (*assignee*) in the sum of £ as hereinafter mentioned (2). Now WITNESS.
THIS INDENTURE WITNESSETH, that for and in consideration of the Owner assigns.
sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, which he is indebted to the said (*assignee*), on account of goods heretofore sold and delivered by the said (*assignee*) to him the said (*assignor*), and the charges thereon, and for securing the payment thereof, HE the said (*assignor*) HATH granted, bargained, sold and assigned, and by these presents DOth grant, bargain, sell and assign unto the said (*assignee*), his executors, administrators and assigns, all, &c. [*insert the quality and quantity of the goods*], and which goods, wares and merchandizes are now on board the said ship, in aforesaid, and are marked or numbered as in the margin of the bill of lading hereunto annexed, as by reference being thereunto had, may more fully appear, and all his right, title, interest and property therein : TO HAVE AND TO HOLD In trust to sell.

(1) If the bill of sale be of the ship also, see *ante*, No. CLXXVIII. Ship. (p. 52), and notes there.

(2) If the bill of sale be accompanied by a bond or warrant of attorney, say, Bond, &c.

“ In the manner hereinafter mentioned, and in the condition [*or defeasance*] of a bond or obligation [*or warrant of attorney*] bearing date,” &c.

BYE OF SALE.Merchandise
(shipped).Assignee to ac-
count for sur-
plus.

the said goods, wares and merchandizes unto and by him the said (*assignee*), his executors, administrators and assigns for ever with full power, and to the end and intent that he and they shall and lawfully may sell, dispose of and deliver the same to any person or persons whomsoever (1). PROVIDED NEVERTHELESS, that if the produce arising from the sale or disposal of the said goods, wares and merchandizes, after deducting all necessary charges and expenses on account of the same, shall amount to more than the said sum of £ . . . , with lawful interest for the same, then the said (*assignee*) shall and will, and doth hereby, for himself, his executors, administrators and assigns, covenant, promise and agree to and with the said (*assignor*), his executors, administrators and assigns, to be accountable for, and pay such surplus to the said (*assignor*), his executors, administrators and assigns. IN WITNESS, &c.

(1) A letter of attorney may here be added, see *post.* p. 69.

* * See notes and observations, *ante*, pp. 58. 64.

BILL OF SALE.

Wages
(seaman's).

No. CLXXXI.

* *A Bill of Sale by a Seaman of Wages, as a Security for a Debt.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, (assignor)
 a seaman of and belonging to the ship or vessel called the ,
 whereof is master, SENDETH GREETING. WHEREAS the Recitals.
 said (assignor) is and stands justly and truly indebted unto (as-
 signee) of, &c. in the full and just sum of £ , for money lent
 and advanced, and goods sold and delivered by the said (assignee)
 to him the said (assignor). NOW KNOW YE, that in consideration of In consideration
 the premises, [and for and in consideration of the sum of 5s. to the of the premises,
 said (assignor) in hand well and truly paid by the said (assignee) assignor assigns
 at or before the sealing and delivery of these presents (the receipt
 whereof is hereby acknowledged)] he the said (assignor) HATH bar-
 gained, sold, assigned, transferred and set over, and by these pre-
 sents DOth bargain, sell, assign, transfer, and set over unto the
 said (assignee), his executors, administrators and assigns, all such
 sum and sums of money, wages and pay whatsoever, now due, owing
 or payable, or which shall or may become due, owing or payable to
 him the said (assignor) from any person or persons whomsoever, for
 his services on board the said ship , or on board of any
 other ship or vessel whatsoever, and all the right, title, property,
 claim and demand whatsoever of him the said (assignor) of, in and
 to the same respectively, and every part thereof: To HAVE, HOLD, Habendum to
 receive and take the said several sums of money, wages and pay assignee till debt
 hereby assigned, unto the said (assignee), his executors, administra- paid.
 tors and assigns, to and for his and their own use, upon trust never-
 theless in the first place to pay and retain to himself and themselves
 all such sum and sums of money, wages and pay as shall be due and
 owing from the said (assignor) to the said (assignee) upon a fair
 account, and then upon further trust to pay such surplus (if any) as And pay surplus
 shall remain unto the said (assignor), his executors, administrators to assignor.
 and assigns; AND the said (assignor), for the consideration aforesaid,
 HATH made, constituted and appointed, and by these presents DOth
 Letter of attor-
 ney.

BILL OF SALE.Wages
(seaman's).

make, constitute and appoint the said (*assignee*) to be his true and lawful attorney, for him the said (*assignor*) and in his name, but to and for the use and benefit of the said (*assignee*) upon trust as aforesaid, to ask, demand, sue for, and by all lawful ways and means recover and receive of and from the master and owners of the said ship , or of and from all and every other person and persons whom it doth, shall or may concern, all such sum and sums of money, wages and pay, as is, are, shall or may be due, owing and payable to him the said (*assignor*) for his services on board the said ship , or on board any other ship or vessel whatsoever, and to give proper acquittances and discharges for the same on receipt thereof, and to settle and agree for and in respect of the premises, as the nature of the case may be or require, and if needful, to appoint one or more attorney or attornies under him the said (*assignee*) for the purposes aforesaid, and the same again at pleasure to revoke, and generally to do, perform and execute all and every act, matter and thing whatsoever, necessary or expedient to be done in or about the premises, as fully and effectually to all intents and purposes as he the said (*assignor*) could or might do if these presents had not been made, he the said (*assignor*) hereby promising to allow, ratify and confirm all and whatsoever the said (*assignee*) and his substitutes shall lawfully do in the premises by virtue of these presents; so nevertheless that he the said (*assignee*), his executors, administrators or assigns, do and shall account with, and pay over unto the said (*assignor*), his executors, administrators or assigns, all such surplus money (if any) as aforesaid. IN WITNESS, &c.

No. CLXXXII.

**A Bill of Lading of Goods on board a Ship or Vessel (1).
(Usual form.)*

SHIPPED by the grace of God in good order and well conditioned by (owner) in and upon the good ship called the _____, whereof _____ is master under God for this present voyage, and now riding at anchor in the (place), and by God's grace bound for _____, to say, _____ bales of, &c. (as the case may be), being marked and numbered as in the margin, and which are to be delivered in the like good order and well conditioned at the aforesaid port of _____, the acts of God, the king's enemies, fire, and all and every other the dangers and accidents of the seas, rivers and navigation of whatever nature and kind soever [save for risk of boats so far as ships are liable thereto only (2)] excepted, unto _____ or to _____ aforesaid, he or they paying freight for the said goods _____, with primage and average as accustomed: (to which may be added, "all which goods are to be subject to lien for freight, and also for general balances due from their respective owners;" or, "and all goods shipped on board, from whomsoever received, or to whomsoever belonging; are to be subject to lien for the freight thereof, and also for any general balances which may be due from the person or persons

(1) A bill of lading is in the nature of a receipt or acknowledgment by the owner or master of a ship or vessel for the goods delivered on board, where the owner of such goods has only a part of the ship or cargo; where he has the whole ship or cargo, it is usually styled a charter-party (of which see *post*. "CHARTER-PARTY"), and it usually contains also an engagement to carry the goods safely to the port to which they are destined, and to deliver them safely to the person to whom they may be consigned, perils of the voyage excepted, the master or owner paying the freight agreed upon for the carriage of them. A bill of lading is not often given where there is a charter-party, and where it is to be considered no otherwise than as evidence of the shipment.

(2) The words within brackets are inserted only where the ship is homeward bound and the cargo is brought on shore by boats.

BILL OF LADING.Merchandise.

to whom they are consigned or addressed.") IN WITNESS WHEREOF the master or purser of the said ship hath affirmed to (*number*) bills of lading all of this tenor and date, the one of which bills being accomplished, the other to stand void, and so God send the good ship to her desired port in safety, Amen. Dated in this day of

Remarks.

. It will be proper that there be three parts of every bill of lading, for the purpose of one being remitted by post to the consignee of the goods, that he may be apprised of their having been shipped; another delivered to the master, that he may at all times ascertain the particular goods of the party he has on board; and the third to remain in the hands of the owner of the goods, as proof of their having been shipped.

A bill of lading is transferrable from one to another by indorsement similar to bills of exchange, and the delivery of it to the indorsee is considered *prima facie* evidence of a *bona fide* and absolute transfer of the legal interest in the goods, unless otherwise expressed in the indorsement.

Stamp.

The latter only of these requires a stamp, and that only where the goods are exported or carried coastwise, other than to Scotland; see *Scotland v. Wilson*, 1 Marsh. 204; 5 Taunt. 533. The stamp by the last act is 3s.; see schedule to the act, *post*. Vol. III. "STAMP."

BONDS.

Account
(administrator).

No. CLXXXIII.

*A Bond (1) from an Administrator (and sureties) to the Ordinary or Ecclesiastical Judge (2) duly to account for Intestate's effects.

KNOW ALL MEN BY THESE PRESENTS, that We (*the obligor and sureties*), of, &c. are jointly and severally holden and firmly bounden (3) unto (*the ordinary*), ordinary of, &c. in the penal sum of £ (4) of

Joint and several
Obligation.

(1) Of the nature of bonds, and in what cases proper under different circumstances, see *ante*, MOD. PREC. Vol. VI. DISSERT. p. 342. et seq.

Bond.

Less strictness is said to be required in framing an obligation than any other deed, "there being only two things requisite, viz. parties and a sum in which one party is bound." Any instrument therefore properly sealed and delivered, which appears on the face of it to have been intended to take effect as a bond, will be construed as such. *Cromwell v. Grunsden*, 1 Lord Raym. 335. Cro. Eliz. 561. 729. 886. Cro. Ja. 203. 208.

Bond may be by
any instrument
intended to take
effect as such.

(2) By 22 and 23 Car. 2. c. 10. it is enacted, that all ordinaries and ecclesiastical judges having power to commit administration of the goods of persons dying intestate, shall take sufficient bonds with two or more sureties from the person to whom such administration is committed, duly to account for the effects which shall come to his hands; the act, however, is held not to extend to administrations granted during minorities; *Folkes v. Dorminique*, 2 Stra. 1137, or *pendente lite*. *Wallis v. Pipon*, Aubl. 183. The ordinary has however power by the common law, to take such bonds if he think fit; see *ibid.* and *Vaugh.* 98.

22 and 23 Car.
2. c. 10.

(3) In order to give surety-obligors a right of action for contribution amongst themselves, if one of them be compelled to perform the obligation, care must be taken to word the bond so as that it is clearly a joint and not a separate obligation of each, the remedy for contribution being founded upon the principle that one of the obligors pays that for which all are liable; for which purpose, where several parties are bound, they should be bound in one and the same penalty, and not each in a separate penalty; see *Collins v. Prosser*, 1 Barn. and Cress. 682. and *Cowell v. Edwards*, 2 Bos. and Pul. 238; see also *post.* p. 74. n. (2).

Surety.

(4) Upon breach of the condition of a bond, the whole penalty becomes forfeited at law, and formerly the whole sum was recoverable; but by 4 and 5 Ann. c. 16, it is enacted, that when a bond is given for the payment of money, a tender of the principal sum due with interest and costs, will be a full satisfaction of such bond; the intent of the penalty of a bond is now therefore to enable the obligee to recover damages to that extent against the obligor on breach of the condition,

On breach of
condition, debt
and costs only to
the extent of the
penalty recover-
able at law.

BONDS.

Account
(administrator).

lawful money of the United Kingdom of Great Britain and Ireland, to be paid to the said (*obligee*), his executors, administrators, successors, or assigns, or his or their lawful attorney or attorneys, for which payment to be faithfully and truly made, we bind ourselves jointly, and each of us bindeth himself severally (1), and our, and each of our heirs (2),

But equity will in some cases enforce specific performance of condition.

On joint and several bond by principals, either party may be sued,

the other contributing his share. 1

Heirs of obligor

and hence such a sum should be inserted as is conceived to be indubitably sufficient to cover the sum lent, with any presumed arrears of interest which there may at any time be, together with the costs which may be incurred in enforcing payment; and this is the only species of redress that the obligee is entitled to under any species of bond at law, 2 T. R. 388, and with respect to bonds for the payment of money, it is, generally speaking, the same in equity; *Hale v. Thomas*, 1 Vern. 350; *Sharpe v. Earl of Scarborough*, 3 Ves. 557; *Mackworth v. Thomas*, 5 *ibid.* 329; but as bonds are in equity generally considered as evidences of an agreement between the parties, and entitling the obligee to a specific execution of the thing to be performed, without allowing the obligor to forfeit the penalty where the intent of the penalty was to secure such performance; See *Anon. Mosely* 37. *Norton v. Mascall*, 2 Vern. 24; *Hale v. Hardy*, 3 P. Wms. 188; *Howard v. Hopkins*, 2 Atk. 371: these courts will, under circumstances requiring it, and when the obligee is the defendant, decree the amount of the whole debt with interest, although it exceed the penalty; *Duval v. Terry*, Show, P. C. 15; *Hale v. Thomas*, 1 Vern. 358; *Pultney v. Warren*, 6 Ves. 192; *Clark v. Seton*, *ibid.* 416, 3 Brow. Ch. Rep. 492, 525. But this indulgence is shewn only when the obligor is plaintiff against the obligee, and not where the obligee is so, because the obligee has chosen his own security, and made himself judge what recompense he will have, and therefore there is no equity to better his security; but where the obligee is defendant, he is entitled to all that is due, before any equity can arise to the obligor.

(1) The effect of a *joint* bond by two or more parties, is at law to create a survivorship, and on the death of either of them the survivor only is liable to the whole; *Towers v. Moor*, 2 Vern. 99; *Simpson v. Vaughn*, 2 Atk. 31; but otherwise where they are jointly and *severally* bound, when they may be severally or jointly sued at the option of the obligee; *Towers v. Moor*, 2 Vern. 99; *Collins v. Griffith*, 2 P. Wms. 313; *Stanley v. Stock*, *Mosely* 383; *ex parte Rowlandson*, 3 P. Wms. 405; *ex parte Banks*, 1 Atk. 106, 2 Ves. 550; *ex parte Bond v. Hill*, 1 Atk. 96. In equity, however, relief will be given to the party sued against the others, for their proportion, or to the survivor in case of the decease of either of them, and the representatives of the deceased obligor will be obliged to contribute. See *Collins v. Griffith*, 2 P. Wms. 313; *Primrose v. Bromley*, 1 Atk. 90; *Bishop v. Church*, 2 Ves. 371; and even at law the obligee can have but one satisfaction against the joint obligors, and not recover the whole against each of them; *ex parte Wildman*, 1 Atk. 110. 2 Ves. 371. *And the right of contribution is the same between co-sureties, whether they are bound by the same or by separate instruments; *Mayhew v. Crickett*, 2 Stark. 185; and see cases cited in note (a) there p. 193; see also *ante*, p. 73. n. (3).

(2) It is material that this word should be inserted, as unless the

executors, and administrators] firmly by these presents, sealed with our respective seals]. Dated this day of (1), in the year of the reign, &c. and in the year of our Lord . Now THE CONDITION (2) of the above written obligation is such, that if the above bounden (*administrator*), administrator of all and singular the goods, chattels, and credits of (*intestate*) deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which have or shall come to the hands, possession, or knowledge of him the said (*administrator*) or into the hands and possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited into the registry of the court, at or before the day of now next ensuing, and the same goods, chattels, and credits, and all other the goods, chattels, and credits of the said deceased at the time of his death, which at any time after shall come to the hands or possession of the said (*administrator*), or into the hands or possession of any other person or persons for him, do well and duly administer, according to law; and further do make, or cause to be made, a true and just account of his said administration, at or before the day of ; and all the rest and residue of the said goods, chattels, and credits which shall be found remaining upon the said administrator's account, the same being

BONDS.
Account
(administrator).
CONDITION.

heirs be expressly named, they will not be bound. See *Barber v. Fox*, 2 Saund. 196; *Shep. Touch.* 369; but otherwise of executors and administrators, who will be bound whether they be named or not; *Co. Lit.* 209 a.* This liability, however, whether of heirs or executors, is only in case of their having assets from the obligor. Administrators of the obligor are also, by 3 Will. and Mar. c. 14. s. 2. made equally liable with his heirs; the bond is not, however, any lien upon the assets, but only charges the representative in respect and to the extent of the assets which may come to his hand. *Bull. Ni. Pr.* 175.; in which it differs from a recognizance, which from the time of its enrolment, see 8 Geo. 1. c. 25. is an immediate lien upon the land of the cognizor, even in the hands of a *bonâ fide* purchaser.

not bound unless named.

(1) Although a bond have no date, or the date inserted be false, yet it will be good if the obligee shew the time of the execution; *Cromwell v. Grunsden*, 1 Lord Raym. 335. 5 Mod. 282, S. C.

Date.

(2) Care should be taken that the condition of a bond be clear and explicit, as no evidence can be admitted to explain its import if it be otherwise; *Ex parte Hearn*, 1 Buck. 165; for the condition of the bond being in favour of the obligor, as protecting him from the penalty, is literally construed, and hence any words expressing the intention will create the conditions; *Butler v. Wigge*, 1 Saund. 16. *Fullerton v. Agins*, 1 Salk. 178. *Cromwell v. Grunsden*, 1 Ld. Raym. 335.

Condition.

BONDS.

Account
(administrator).

first examined and allowed of) do order and apply as the judge or judges by his or their decree or sentence, pursuant to the true intent and meaning of this act, shall limit and appoint. AND if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or administrators therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said (*administrator*) within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court. THEN this obligation to be void, or else to be and remain in full force and virtue.

Stamp.

* * If the estate of the intestate to be administered do not exceed £20 in value, the bond is exempted from stamp, but if above that sum it will be liable to a progressive ad-valorem duty, as mentioned in schedule III. of the act, 55 Geo. 3. c. 184. which see *post*. Vol. III. "STAMP."

BONDS.

Account
(broker).

No. CLXXXIV.

**A Bond from a Broker to Account for Goods delivered to him for Sale.*

KNOW ALL MEN BY THESE PRESENTS, that I (*obligor*) of, &c. am holden and firmly bounden unto (*obligee*) of, &c. in the penal sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to be paid to the said (*obligee*), his executors, administrators or assigns, or his or their lawful attorney or attornies, for which payment to be well and truly made I bind myself, my heirs, executors and administrators firmly by these presents. Dated, &c.

Single Obligation.

WHEREAS the above-named (*obligee*), on the day of the date of the above written obligation, has delivered into the hands of the above bounden (*obligor*) the several goods and merchandizes mentioned in the inventory thereof hereunder written, of the supposed value of or thereabouts, to be by him forthwith sold by public sale, as the said (*obligor*) doth hereby acknowledge. Now THE CONDITION of the above written obligation is such, that if the said (*obligor*), his executors or administrators, do and shall, within one calendar month next ensuing the date of the above written obligation, well and truly pay or cause to be paid unto the said (*obligee*), his executors or administrators, all such sum and sums of money as shall arise by sale of such of the said goods as shall have been by him or them then sold; and also do and shall return unto the said (*obligee*), his executors or administrators, all such of the said goods as shall then remain unsold (casualties happening by fire only excepted). THEN, &c.

CONDITION.

SCHEDULE

ABOVE REFERRED TO.

BONDS.

Account (clerk).

No. CLXXXV.

Bond by a Clerk (and a Surety) duly to Account for what may come to his hands (1).

KNOW ALL MEN, &c. (2). WHEREAS (3) the above named (*employer*) hath taken the above named (*clerk*) of, &c. into his service

Bond of surety
void by change
in firm.

(1) A bond of indemnity by a surety for the conduct of a clerk in a banking-house or common copartnership, not incorporated, is void as soon as there is any change in the firm by death or otherwise, but it is not so of companies, as the Globe Insurance Company, or the like, which from their nature are flux bodies. *Metcalf v. Bruin*, 2 Campb. 425; 12 East, 400. S. C.; but of this see *post*.

Obligation.

(2) See the form of the obligatory part of a bond, *ante*, p. 73. when joint, and p. 77. when single.

Clerk to a public
company.

(3) If the clerk be in the employ of a public company, say,
“WHEREAS the said (*clerk*) hath been admitted a clerk in the company, and the said (*surety*) hath agreed to enter into the above written obligation for his fidelity in the service of the said company: NOW THE CONDITION of the above written obligation is such, that if the said (*clerk*) do and shall, from time to time, and at all times hereafter, during his continuance in the service of the said company, faithfully, honestly, diligently and carefully execute, perform and discharge the said service, and all and every other service of the said company wherein he is, shall, or may be employed, and shall and do, so soon as he shall be thereunto required, make and deliver a just and true account in writing of all sum and sums of money, cash, notes and bills which shall come to the hands of the said (*clerk*) or which he shall be entrusted with, by or on account of the said company, and also make good, answer for, and pay the monies due on the balance of such account to the said company, or such persons as the said company or the court of directors thereof, for the time being, shall appoint; and if the above bounden (*surety*) shall and do moreover well and sufficiently save, defend, keep harm-

as a clerk, and the above bounden (*surety*) hath agreed to join with the said (*clerk*) in the above written obligation for his fidelity in the said employ. Now THE CONDITION of the above written obligation is such, that if the said (*clerk*) do and shall from time to time, and at all times, so long as he shall be in the service or employ of the said (*employer*), well, truly and faithfully account for, pay over and deliver unto him the said (*employer*), his executors, administrators, or partners or assigns, or to such other person or persons as he or they shall direct, all and every the sum and sums of money, books, papers, matters and things of or belonging to the said (*employer*), which shall at any time, and from time to time be received by or come to the hands of him the said (*clerk*). And also do and shall act and conduct himself at all times with fidelity, integrity and punctuality in and concerning the matters and things which shall or may be reposed in or entrusted to him as such clerk aforesaid, *and do and shall return and make good any such monies, books, papers, matters or things which he may embezzle, take or mis-employ, within the space of days after he shall have been justly accused thereof, or in default thereof, if the said (*surety*) do and shall (1), within the like space of time after he shall have had notice in writing from the said (*obligee*) of any such default, make due and sufficient repayment, restitution or compensation for the loss or damage which he shall have thereby sustained. THEN, &c. or else, &c.

BONDS.

Account (clerk).

CONDITION.

less and indemnified the said company, and the directors, and all other members thereof, from and against all losses, costs, charges, damages and expences for or by reason of any act, deed, matter or thing whatsoever, done or to be done by him the said (*clerk*) in or during the said service. THEN, &c. or else, &c.

(1) Where a surety gives a bond for the fidelity of a clerk or officer of trust, the condition should be so framed as to give the surety every means of protection against the consequences he subjects himself to; and see *Phillips v. Fordyce*, 2 Chit. (temp. Mansf.) 676. Surety.

BONDS.

*Account
(goods sold).*

No. CLXXXVI.

**A Bond to account for the Value of Goods entrusted to a special agent abroad for sale.*

Recital of agreement for sale of goods by agent abroad.

KNOW ALL MEN, &c. (1). WHEREAS by certain articles of agreement indented, bearing even date herewith, after reciting that the above bounden (*obligor*) was about to proceed on a voyage to , and that the above named (*obligees*) had shipped on board the ship or vessel called the whereof was master, bound to aforesaid, and entrusted to his care, divers goods, wares and merchandizes, to the appraised amount and value of £ , it was agreed between the above bounden (*obligor*) and the above named (*obligees*), that the said (*obligor*) should take the said goods, wares and merchandizes to aforesaid, and there sell and dispose of the same to the best advantage, and remit from thence home, from time to time, to them the said (*obligees*), their executors, administrators and assigns, the money arising from the sale of such goods, or the produce thereof; and that the above named (*obligees*) should, from time to time during the term of years, to commence from the date hereof, as they received such remittances or produce, ship and consign such other goods, wares and merchandizes as they should think proper, to the said (*obligor*) to aforesaid, so as to keep a stock of goods in the hands of the said (*obligor*) to the amount and value of £ , and that the said (*obligor*) should from time to time dispose of the said other goods, wares and merchandizes so to be sent to him from time to time, during the said term, to the best advantage, and for the most money that could be got for the same, and to remit the money to arise therefrom or the produce thereof, from time to time, as he should dispose of the same, to the said (*obligees*), their executors, administrators and assigns. AND it was further agreed, that the said (*obligor*)

should not, during the said term of years, purchase or receive any goods, wares or merchandizes whatsoever, in his own name, or on his own account, or in the names of any other person or persons in trust for him, but solely for the mutual benefit of the said (*obligees*), and employ his whole time in disposing of such goods as the said (*obligees*) should, during the said term, from time to time, ship and consign to him; and it was thereby further agreed by and between the above bounden (*obligor*) and the above named (*obligees*), that all such profits and emoluments as should or might arise by the sale of the said goods, should, after payment of all expences, be divided as therein mentioned; and it was thereby further agreed by and between the above bounden (*obligor*) and the said (*obligees*), that he the said (*obligor*) should, from time to time, and at all times during the said term of years, keep proper books of accounts, with regular entries therein made of all such goods, wares and merchandizes as he should so receive during the said term, and also make regular and proper entries, in such books of account, of all such sum and sums of money as he should receive for the said goods, for the better ascertaining the matters aforesaid; and that they the said (*obligees*) or their agents, should and might, from time to time, during the said term of years, have free liberty to inspect, view and examine the books of accounts so to be kept as aforesaid, and to take or cause to be taken extracts from or copies thereof; and it was thereby further agreed that the said (*obligor*) should enter into the above written obligation for due performance of the said recited agreement, with such condition to be thereunder written as hereinafter is contained. NOW THE CONDITION of the above written bond or obligation is such, that if the above bounden (*obligor*), his heirs, executors or administrators, shall and do sell and dispose of the goods, wares and merchandizes belonging to the above named (*obligees*) now to be taken out by him, and all such other goods, wares and merchandizes as shall or may, from time to time during the said term of years, be shipped and consigned to him by the said (*obligees*) to aforesaid, to the best advantage, and as he or they shall receive the money and produce thereof, immediately remit the same, with a true and particular account of the sales of such goods, and the receipts of the money arising therefrom, to the said (*obligees*), their heirs, executors and administrators; and also if the said (*obligor*) shall not nor do, during the said term of years, purchase or receive any goods, wares or merchandizes in his own name, or on his own account, or in the name of any other person or persons in trust for him, and shall not nor do, during the said

~~NOTE.~~

Account
(goods sold).

CONDITION.

BONDS.Account
(goods sold).

term, employ his time in any other manner than in disposing of the goods entrusted to his care as aforesaid, or at any time hereafter during the said term of years, to be shipped and consigned to him ; and also if the said (*obligor*), his heirs, executors or administrators, shall and do keep a proper, regular and usual book of account, wherein shall be entered a just and particular account of the receipts of such goods, wares and merchandizes, and the monies arising from the sale thereof, and shall and do permit such books of accounts to be always open for the inspection of them the said (*obligees*), their executors, administrators, agents or assigns, and allow them or any of them to take or cause to be taken extracts from and copies thereof, from time to time, during the said term of years, as they shall think proper ; and also if the said (*obligor*) shall not nor do, during the said term of years, contract any debts or sign or give any bonds, bills, notes or other writing, by which the said (*obligees*) or either of them, their or either of their heirs, executors, administrators or assigns, shall or may become liable to pay, or be put to any costs, charges, sums of money or damages whatsoever, for and concerning the same, in any manner howsoever. THEN, &c. Otherwise, &c.

BOND.
 Account
 (17 Geo. 3. c. 53).

No. CLXXXVII.

*A Bond from a Nominee of an Ordinary (and his Surety) for
 duly accounting and applying Money borrowed for Building
 or Repairing the Residence of an Incumbent (1).*

OBLIGATION of the bond [*in the common form of obligations*] Obligation.
 from A. B. [*describing him*] and C. D. of, &c. [*describing*
the surety] to [*describing the ordinary*] in the penal
 sum of £ [*to be double the sum for which the surety is to be*
given, &c.] (2)

THE CONDITION of the above obligation is such, that if the said CONDITION.
 shall and do justly and truly pay and account for the sum of
 £ received by him this day from C. D. being the person to
 whom a mortgage hath been this day made and executed of the
 glebe, tithe-rents, and other profits and emoluments of the rectory
 [*vicarage, &c. as the case may be*] of for the purpose of
 building [*rebuilding or repairing*] of the said rectory, &c. [*as the*
case shall be], according to the true intent and meaning of the
 several acts of Parliament passed in the seventeenth and twenty-
 first years of the reign of his Majesty King George the Third, for
 these purposes, then this obligation to be void, or otherwise to
 remain in force. IN WITNESS, &c.

A. B. } Obligors.
 C. D. }

(1) By the acts 17 Geo. 3: c. 53. and 21 *ibid.* c. 66. incumbents of 17 Geo. 3 c. 53.
 livings, where there is no sufficient house of residence, are empowered,
 with the consent of the patron and ordinary, to borrow money upon
 mortgage, &c. for the purpose of building one; and the money so bor-
 rowed is directed (see sect. 4. of the first act) to be paid into the hands
 of such person as the ordinary, patron, and incumbent shall appoint,
 who shall give a bond to the ordinary with sufficient surety in double
 the sum borrowed, with a condition for his duly applying and account-
 ing for the money paid to him.

(2) See *ante*, pp. 73. 77.

Obligation.

BONDS.

Account
(renter-warden).

No. CLXXXVIII.

** A Bond from a Renter-warden of a Company, duly to Account.
(Usual form.)*

KNOW ALL MEN by these presents, that WE (*obligors and sureties*) of, &c. are held and firmly bound to (*obligees*) of, &c. [*the obligees are usually the two oldest members*] in the penal sum, &c. (1).

WHEREAS the above bounden (*obligor*) is chosen renter-warden of the company of London, by reason whereof he will receive into his custody divers and several sums of money, plate, goods, and chattels, of and belonging to the said company.

CONDITION. NOW THE CONDITION of the above written obligation is such, that if the said (*obligor*), his executors or administrators, at the end of his wardenship, or upon request to him or them in that behalf to be made, shall make and give unto such auditor or auditors, as on that behalf shall be appointed by the master, warden, and assistants of the said company, for the time being, or the greater part of them assembled in a court of assistants, a just and true account in writing of all such goods, chattels, money, plate, or other things as have or shall, during his said wardenship, come to his hands, custody, or charge, in right of his said office of warden, and shall thereupon pay and deliver over to the next renter-warden of the said company, all such plate, money, goods, chattels, and moveables as by the foot or balance of the said account shall appear to be due and belonging to the said company, THEN this obligation to be void, or else to be and remain in full force and virtue. [IN WITNESS, &c.] (2)

Obligation.
Witness.

(1) See *ante*, p. 73.

(2) These words are usually, I have observed, inserted in bonds given to public companies; and also in forms of bonds given in the schedules to acts of Parliament, but they seem unnecessary, and are never inserted in ordinary cases.

NOTE.

Accounts
(stamps).

No. CLXXXIX.

**A Bond (in usual form) from the Distributor of Stamps (and Sureties) to his Majesty, to Account for monies received.*

KNOW ALL MEN, &c. (1) WHEREAS the above bounden (*obligor*) is Recitals.
entrusted and employed to furnish and supply several parts of Great Britain with vellum, parchment, or paper, stamped or marked as the several acts of Parliament, in that case made, do require, and will, or may receive considerable quantities of vellum, parchment, and paper so stamped as aforesaid from the commissioners now or for the time being authorized or appointed for putting the said acts in execution, or from the head office now or for the time being appointed or used for stamping or marking of vellum, parchment, or paper, in pursuance of the said acts. NOW THE CONDITION of the above CONDITION.
written obligation is such, that if the said (*obligor*), his heirs, executors, administrators, or assigns shall and do, for all vellum, parchment, and paper so marked or stamped as aforesaid, which he the said (*obligor*), or any other at his request, by his direction or for his use, shall receive from the commissioners now or for the time being appointed or authorized for putting the said acts or any of them into execution, or from any other person or persons by their order, or from the head office now or for the time being appointed or used, or to be appointed or used, for the stamping or marking of vellum, parchment, or paper in pursuance of the said acts, or any of them, well and truly pay or cause to be paid into the hands of the receiver-general, now or for the time being, of his present Majesty, his heirs or successors, of the duties upon vellum, parchment, and paper, or to such other person or persons as the commissioners now or for the time being appointed or authorised, or to be appointed or authorised, for the putting the said

(1) See *ante*, pp. 73. 77.

Obligation.

BONDS.

Account
(stamps).

acts in execution shall order or direct, all such sum or sums of money as the duties charged on or payable in respect of such vellum, parchment, or paper by virtue of the said acts or any of them, did or shall, according to the denotation or import of such the several marks or stamps put or to be put thereon in pursuance of the said acts, or any of them, amount unto, and which have not been already paid into the hands of such receiver-general, or any other person, by the order or direction of such commissioners as aforesaid, and also all such further sum and sums of money (not having been already paid as aforesaid) as the values and prices of all such vellum, parchment, and paper did or shall amount unto *over* and besides the said duties, marks, and stamps thereof. AND also if the said (*obligor*), his heirs, executors, and administrators, do and shall well and truly pay or cause to be paid into the hands of said receiver-general as aforesaid, all such sum or sums of money as he the said (*obligor*), or any other person or persons by or under him employed or to be employed, shall from time to time receive for any of the duties payable to his Majesty, his heirs and successors, by the act of Parliament in that case made, for pamphlets, papers, or advertisements to be printed or published as therein is mentioned, or for any of the duties payable to his Majesty, his heirs and successors, by the act of Parliament in that case made, for cards or dice; and further, if the said (*obligor*) shall and do, from time to time, so long as he shall continue to be employed or to act in or about the said acts of Parliament, or any of them, well, faithfully, and truly observe, and obey, and perform all such orders, instructions, or directions as he shall from time to time receive touching the same from the Right Honourable the Lord High Treasurer of Great Britain, or the Commissioners of the Treasury for the time being, or any three or more of them, or from the Treasurer of the Exchequer for the time being, or from the Commissioners now or for the time being authorised or appointed, or to be authorised or appointed, for putting the said acts or any of them, into execution or from any three or more of such Commissioners: and if the said (*obligor*) shall not or do not sell or dispose of, or cause to be sold or disposed of, any stamped vellum, parchment, or paper at or in any place, except in the division of the , then the above written obligation to be void, or else the same to remain in full force. IN WITNESS, &c.

BONDS.

Account
(surveyor).

No. CXC.

**A Bond from a Surveyor of High Roads, to Account for monies coming to his hands (1).*

WE, A. B. (*surveyor of the highways for the parish, township, &c. of* ,) and C. D. (*surety*) of, &c. , are bound to E. F. (*nominee*) of aforesaid, in the sum of £ , to be paid to the said E. F. his executors, administrators, or assigns, for which payment we hereby bind ourselves severally, and each of our heirs, executors, and administrators, dated this day of , 18 . THE CONDITION OF THIS BOND IS SUCH, that if the said A. B. his heirs, executors, or administrators, shall duly and faithfully account for, apply, and pay all and every the sum and sums of money which shall come to his hands as surveyor of the highways for the (*parish, &c.*) according to the direction and true intent and meaning of the statute made in the thirteenth year of the reign of his Majesty King George the Third, "For the Amendment and Preservation of the Highways," then this bond to be void, or else to remain in full force. IN WITNESS, &c. (2)

(1) By stat. 13 Geo. 3. c. 78. justices of the sessions are empowered to appoint surveyors of the highways in any parish, township, or place, who shall, if required by the church-warden, overseer of the poor, or any principal inhabitant of the said parish, &c. within fourteen days after his appointment, give a bond (upon paper without stamp) to some person within such parish, &c. to be nominated by the said justices, with sufficient surety to account for the money which shall come to his hands as such surveyor. 13 Geo. 3. c. 78.

(2) See *ante*, p. 84. n. (2).

Witness.

* * No stamp requisite.

Stamp.

BOND.

Account
(surveyor).

No. CXCI.

** A Bond from a Surveyor of Turnpike Roads duly to Account (1).*

Obligation. WE, A. B. surveyors of the turnpike roads under an act passed in the year of the reign of King George the "For, &c. [state the principal part of the title of the act];" and C. D. of are bound to E. F. of in the sum of £ to be paid to the said E. F., his executors, administrators, and assigns, for which payment we hereby bind ourselves severally, and each of our heirs, executors, administrators, and assigns. Dated this day of

CONDITION. THE CONDITION OF THIS BOND IS SUCH, that if the said A. B., his executors or administrators, shall duly and faithfully account for, apply, and pay all and every the sum and sums of money which hath come or shall come to his hands as surveyor of the turnpike roads aforesaid, according to the direction and true intent and meaning of the said act, and of the statute made in the third year of the reign of his Majesty King George the Fourth, "For Regulating Turnpike Roads," then this bond to be void, else to remain in full force. IN WITNESS, &c.

3 Geo. 4. c. 126. (1) By 3 Geo. 4. c. 126. (sec. 76.) the trustees and commissioners of every turnpike road are required to take sufficient security for every treasurer to be appointed by them, under any act for making, repairing, or maintaining any turnpike road, for the due and faithful execution of his office, before he shall enter upon his said office, and shall also, if they shall think proper, take such security from any other officer to be appointed under any such act. A great part of this act is repealed by 4 Geo. 4. c. 94. but not the section above referred to.

Stamp.

*** The act of 13 Geo. 3. c. 84. requiring a like bond to the above given by surveyors of *High Roads*, directs that such bond shall be upon paper without a stamp, but in the act of 3 Geo. 4. (see *supra*, n. (1)) nothing is provided in this respect, nor does a bond of this latter kind appear to be within the general exemption of the stamp act of 55 Geo. 3. c. 184.

BONDS.

Account
(*treasurer or*
manager, &c. of
company).

No. CXCL.

**A Bond from a [Treasurer (1) or] Manager of a Joint Stock or other Public Company (and Surety) duly to Account, &c.*

KNOW ALL MEN, &c. (2), WHEREAS the above bounden (*manager*) Recitals.
has been chosen and appointed by the directors of the
company of proprietors to be acting manager of the concerns of the
said company, under the superintendence of the directors thereof
for the time being. AND the said (*surety*), has agreed to join with
the said (*manager*) in the above written obligation, as his surety,
with such condition for making void the same as here-under is
written. NOW THE CONDITION of the above written obligation CONDITION.
is such, that if the above bounden (*manager*) shall and do, in all
things well, truly, diligently, and faithfully, to the best of his skill,
knowledge, and abilities, act and conduct himself, in the manage-
ment and superintendence of the concerns of the said company, under
the direction and controul of the committee of directors of the said
company for the time being, in every such way and manner as an honest,
just, and faithful officer or agent of the said company. AND ALSO do
and shall, once in every week, so long as he shall continue acting ma-
nager of the said company, or oftener if thereunto required by the
directors of the company for the time being, or any of them,
make and give unto such directors, or unto the auditor or auditors,
or treasurer or treasurers for the time being, of the said company,
a just and true, full, and particular account in writing of all sum
and sums of money, goods, chattels, commodities, property, and
effects of or belonging to the said company, which shall have been
received by him, or have come to his hands, charge, custody, or
possession, in right of his said office or otherwise, during the
preceding week, or other time or period which shall have elapsed
since he shall have last tendered such account, and do, and shall
at all times and from time to time, pay and deliver over to the

(1) If the bond be from a treasurer, see *ante*, p. 78, notes.

(2) See form of the obligation, *ante*, p. 73 ; see also notes there.

Obligation.

BONDS.

Account
(treasurer or
manager, &c. of
company).

banker or bankers, treasurer or treasurers of the said company, for the time being, or other person or persons who shall be duly authorised to receive the same, all such money, goods, chattels, property, and effects, as by the foot or balance of the said account shall appear to be, or which shall in fact be due and belonging to the said company. AND FURTHER, if the said (*manager*) shall not depart or withdraw himself from the management of the concerns of the said company until full payment and satisfaction shall be made of and for all such moneys, balances, goods, property, and effects as aforesaid, notes, bills, &c. which in the said service shall come to the hands of the said (*manager*), or which he shall be entrusted with by or on account of the said company, and also make good, answer for, and pay the monies due on the balance of such account to the said company, or such persons as the said company, or the court of directors thereof for the time being, shall appoint, and shall moreover well and sufficiently save harmless and keep indemnified the said company, and the directors, and all other members thereof, from and against all losses, debts, costs, charges, or other expences, for or by reason of any matter or thing whatsoever done or omitted to be done by the said (*manager*), in or during the said service: THEN, &c. IN WITNESS, &c.

BONDS.

Apprentice
(clothes).

No. CXCIIL.

**A Bond by the Father of an Apprentice to provide him with
Clothes, &c. during his Apprenticeship.*

KNOW ALL MEN, &c. (1) WHEREAS (*apprentice*), son of the above Recital.
bounden (*obligor*), with the consent and good liking of the said (*ob-*
ligor), his father, by indentures of apprenticeship bearing even date
herewith, hath placed and bound himself unto the said (*obligee*) to
serve as an apprentice for the term of years from the day of the
date of the said indentures of apprenticeship, the said (*obligor*) pro-
viding him with clothes during the said term. NOW THE CONDITION CONDITION.
of this obligation is such, that if the said (*obligor*), the father, his
executors or administrators, do and shall, at his and their own proper
costs and charges during all the term aforesaid, find and provide for
the said (*apprentice*), his son, proper and sufficient wearing apparel of
all sorts, and cause to be mended and washed all his clothes and linen;
and in case his said son shall at anytime during the said apprenticeship
fall sick or lame, or otherwise become incapable of performing his busi-
ness, then if the said (*obligor*), the father, his executors or adminis-
trators, do and shall, at his and their own proper costs and charges
during such sickness, lameness or other incapacity, find and provide
his said son with lodging and diet, and pay the expences of doctor,
surgeon and apothecary, and all other incident charges: AND in
case the said (*apprentice*), the son, shall at any time during his said
apprenticeship, embezzle, misspend, lose, purloin or unlawfully take
away any money, bills, notes, goods, plate or other effects belong-
ing to the said (*obligee*) or any of his customers, which by him or
them shall be committed to the care of the said (*apprentice*); then
if the said (*obligor*), the father, his executors or administrators, shall
and do, within one month after notice thereof, and due proof of such

(1) See form of obligation, *ante*, p. 77, see also 73, notes.

BONDS.Apprentice
(clothes).

embezzlement aforesaid, either by sufficient testimony of witnesses, or confession of the party, satisfy and pay, or cause to be satisfied and paid unto the said (*obligee*), his executors, administrators or assigns, all such sum and sums of money, and the true value of all such goods and effects whatsoever, whereof proof shall be made of having been so embezzled by the said (*apprentice*), in manner aforesaid: AND also if the said (*obligor*), the father, his executors or administrators, do and shall, at all times hereafter, well and sufficiently save harmless and keep indemnified the said (*obligee*), his executors and administrators, and his and their lands and tenements, goods and chattels, of and from all actions, suits, costs, charges, losses, damages and expences which shall or may happen or be occasioned by reason or means of all or any the matters aforesaid. THEN the condition of this bond shall be void and of none effect, but otherwise shall remain in full force and virtue. IN WITNESS, &c.

BONDS.

Arbitration
(abide award).

No. CXCIV.

Bond upon the submission of Disputes to Arbitration, to abide the Award.

Variation where the submission is by an accompanying deed.

KNOW ALL MEN, &c. (1). WHEREAS disputes having arisen between the said (*obligor*) and (*obligee*) relative to [*here state the subject of difference*] they the said (*obligor*) and (*obligee*), by an indenture bearing even date with the above written obligation, and made or expressed to be made between the said (*obligor*) of the one part, and the said (*obligee*) of the other part, have referred the same to the judgment and determination of (*the arbitrators*) of, &c. and have agreed to execute mutual bonds for the performance of the award of the said (*arbitrators*), with such condition to be thereunder written, for making void the same as hereinafter is expressed. Now CONDITION.

THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors and administrators, do and shall well and truly observe, perform and keep the award, order, arbitrament and final determination of the said (*arbitrators*), or of such other person as they shall or may by virtue of the power to them given in or by the said in part recited indenture of submission, name and appoint to be umpire between them, or to assist them in or concerning the premises, or of any two of them, of and concerning the matters and things so referred to them the said (*arbitrators*) as hereinbefore is mentioned; and also if the said (*obligor*), his heirs, executors and administrators, do and shall well and truly perform, observe, fulfil and keep all and every the covenants, clauses, conditions, stipulations and agreements in the said in part recited indenture of submission contained, on the part and behalf of the said (*obligor*), his heirs, executors or administrators, to be observed, performed, fulfilled and kept, according to the true intent and meaning of the same respectively. THEN, &c. or else, &c.

(1) See the form of the obligatory part of this bond, *ante*, p. 77; see also p. 73, note. Obligation.

. No agreement stamp is necessary on an arbitration bond, unless it contains stipulations between the parties as to costs, &c.; Wansborough's case, 2 Chit. Rep. 40.

BONDS.

Bottomry.

No. CXCIV.

A Bottomry Bond (1).

KNOW ALL MEN, &c. [*common form, as ante, (2).*] WHEREAS
 the good ship or vessel called the _____ of the burthen
 of _____ tons, or thereabouts, whereof _____ is
 master, is now about to sail on a voyage to _____ (3) and back.

Bottomry bonds
 not usurious
 although bearing
 more than 25.
 per cent interest.

Excess of in-
 terest not usury
 when the princi-
 pal is put in
 hazard.

Respondentia.

Obligation.
 Contracts for
 loans on *foreign*
 ships bound to
 India, void, un-
 less trading
 from their own
 country.

(1) Bottomry is a contract in the nature of a mortgage, by which the owner or master of a ship borrows money to enable him to carry on the voyage, and pledges the keel or *bottom* of the vessel for the repayment, in which case it is understood that if the ship be lost the lender loses also his whole money, but if it return in safety, then he recovers back his principal, and also such premium or interest as may have been agreed upon, even though it exceed the legal rate, and such a stipulation is holden not to be usurious, on account of the risk the lender runs of losing both principal and interest, *Chesterfield v. Janson*, 1 Ves. 148. 151; 1 Atk. 341. 348. S. C.; *Sharpley v. Hurrell*, Cro. Jac. 208; *Roberts v. Trenayne*, ib. 508 for it is an established rule that no contract is within the statute of usury, although more than 5 per cent. be taken, if the principal be actually put in hazard, and may be totally lost to the lender; *Morse v. Wilson*, 4 Durnf. and E. 353. This hazard is the basis and foundation of the contract; if, therefore, the vessel do not go the voyage, but remain all the while in port, so that the lender run no risk of losing his money, he will not be entitled to any extraordinary premium, but the court will decree him his principal with simple interest only; see *Deguilder v. Depeistre*, 1 Vern. 263.

* See the difference between a *bottomry* and a *respondentia* bond, and the form of the latter, *post*. "BOND" (*respondentia*).

(2) See *ante* p. 77, also 78, notes.

(3) If the ship upon which the money is intended to be advanced be a *foreign* ship and designed to trade to the East Indies, the bond will be void, as the 7 Geo. 1. c. 21. s. 2. declares, that all contracts made or entered into by any of his Majesty's subjects, or any person in trust for them, for or upon the loan of any monies by way of bottomry on any ship or ships in the service of foreigners, and bound or designed to trade to the East Indies or places beyond the Cape of Good Hope (mentioned in the statutes relating to the East India Company) shall be null and void. This act however, it should seem, does not prevent the lending money on bottomry on foreign ships trading from their own country to *their*

AND WHEREAS the said (*obligee*) hath lent unto the said (*obligor*) the sum of £ to enable him to prosecute the said voyage, and hath agreed to stand to and bear the hazard and adventure thereof on the hull or body of the said ship, so as that the period of the said voyage do not exceed calendar months. Now THE CONDITION of the above written obligation is such, that if the said ship or vessel do and shall with all convenient speed proceed and sail from out of the river Thames on her said voyage to , and return and come to without deviation (1), except by the casualties of the sea; and also if the above bounden (*obligor*), his heirs, executors or administrators, do and shall within the space of days next after the return and arrival of the said ship or vessel in the said River Thames from her said intended voyage, or at the end and expiration of calendar months, to be accounted from the day of the date of the above written obligation (which of the said terms shall first happen) well and truly pay, or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland (2), or if in the said voyage and within the said period of calendar months, to be accounted as aforesaid, an utter loss of the said ship or vessel, by fire, enemies, pirates or any other casualty, shall unavoidably happen, to be sufficiently proved by the said (*obligor*), his heirs, executors or administrators. THEN, &c. or else, &c.

BONDS.

Bottomry.

CONDITION.

settlements in the East Indies, the purpose of the act being only to prevent the people of this country from trading to the British settlements in India under foreign commissions; see Park, c. 21.

(1) If the ship be lost by a wilful deviation from the track of the voyage, the event has not happened upon which the borrower was to be discharged from his obligation, as she was not lost by a peril to which the lender agreed to make himself liable; see 1 Eq. Ca. Ab. 372; 2 Ch. Ca. 130; Green v. Young, 2 Salk. 444; 2 Lord Raym. 840. S. C.

Deviation of vessel from its intended course vacates bottomry bond.

(2) If the voyage be to India, it is usual to make the bond for twenty months certain and sixteen months uncertain, in which case add,

India voyage.

“Together with the sum of £ of like lawful money for every calendar month the said ship or vessel shall be out on the said voyage over and above twenty calendar months, to the expiration of thirty-six calendar months, to be accounted as aforesaid, and so in proportion for less than a month.”

* * Equity will not assist the obligee of a bottomry bond where it causes an unreasonable interest; Tandy v. Turner, Eq. Ca. Ab. 372. pl. 7. but the reasonableness or unreasonableness of the interest depends upon the risk; Chesterfield v. Jansen, 1 Atk. 341. 1 Ves. Sen. 151. s. c.

BONDS.

Execute
(*bill of sale*).

No. CXCVI.

** A Bond from a Part Owner of a Ship that another Part Owner (abroad) shall join in Executing a Bill of Sale.*

KNOW ALL MEN, &c. (1) WHEREAS (*obligor*), of &c., owner of one full half part of and in all that ship or vessel called the of the burthen of tons, or thereabouts, now lying at whereof is master, by a certain writing or bill of sale bearing date on or about the day now last past, in consideration of the sum of £ has granted, bargained, sold, and assigned to the said (*bargainee*), the part and share of and in the said ship whereof he is owner as aforesaid, and of all and singular the masts, sails, yards, rigging, guns, boats, and other stores, of what nature or kind soever, to the said vessel belonging, TO HOLD the same to the said (*bargainee*), his executors, administrators, and assigns, as thereby, relation being thereunto had, will more fully appear. AND WHEREAS A. B. of, &c. merchant, is owner of the other half part of the said ship, and is made party to the said bill of sale, but being absent abroad the said (*obligor*) hath undertaken and agreed with the said (*bargainee*) that he shall duly execute the said recited bill of sale, or otherwise by some deed or writing, sufficiently convey the said half part of and in the said ship, with her appurtenances, unto the said (*bargainee*), and thereupon the said (*bargainee*) paid unto the said (*obligor*) the sum of £ being the full sum which the said half part of the said A. B. of and in the said sum of £ (the purchase money for the said ship or vessel) amounts unto. Now THE CONDITION of the above written obligation is such, that if the said A. B. his executors, administrators, or assigns, shall and do within calendar months after the date above written, duly sign, seal, and execute the said in part recited writing or bill of sale of the said half part of the said ship to the said (*bargainee*) as aforesaid, or otherwise by some other deed or writing duly executed, sufficiently convey and assure the said half

Obligation.

(1) See *ante*, p. 77 ; also 78, notes.

BONDS.

Executo
(bill of sale).

part of and in the said ship with her appurtenances, in and by the said in part recited bill of sale, intended to be sold unto the said (*bargainee*), his executors, administrators, and assigns, as by him or them, or their counsel, shall be reasonably advised and required. AND if in the mean time, and until the said half part of the said A. B. of and in the said ship with her appurtenances shall be sufficiently and actually sold and conveyed as aforesaid, the said (*bargainee*), his executors, administrators, and assigns, shall and do peaceably and quietly have, hold, possess, and enjoy the said half part of and in the said ship or vessel with her appurtenances belonging to, and whereof the said A. B. is owner, without any let, suit, trouble, denial, or interruption, of or by the said A. B. his executors, administrators, or assigns, or any other person or persons whatsoever. THEN, &c.

BONDS.

Execute (convey-
ance).

No. CXCVII.

Bond for an Infant to Execute Conveyance when of age (1).

KNOW ALL MEN, &c. (2) WHEREAS the above named (*obligor*) is seised of an estate in fee simple of certain messuages, lands, and hereditaments, situated at _____ in the county of _____ jointly with his brother (*the infant*) of, &c. under or by virtue of the last will and testament of A. B. their late father, deceased. AND WHEREAS the said (*infant*) is at present under the age of twenty-one years, being of the age of _____ years only, or thereabouts. AND WHEREAS the said (*obligor*) hath contracted with the said (*obligee*) on the part of himself and his said brother, for the sale to him of the entirety of the said hereditaments at the sum of £ _____. AND WHEREAS the said (*obligee*) hath agreed to complete his said purchase upon the said (*obligor*) entering into the above written obligation for the conveyance and confirmation of the said (*infant*) on his attaining the age of twenty-one years; and by indentures of lease and release, already prepared and engrossed, the lease bearing or intended to bear date the day next before the date of the release, and the release bearing or intended to bear even date with the above written obligation, and made, or expressed to be made, between the said (*obligor*) of the first part, the said (*infant*) of the second part, and the said (*obligee*) of the third part [*or as the*

Bond or covenant to procure another to convey, good at law.

(1) A bond or covenant to procure another to convey, is good and binding at law upon the obligors, although without consideration, *Bradshaw v. Sutton*, Colles, P. C. 25; and if the party have legal power to require performance it will also be enforced in equity. *Anon.* 2 Ch. Ca. 53, *Costigan v. Hastler*, 2 Sch. and Lef. 166.

Infant reversioner made party to a lease by tenant for life, tenant for life died, infant executed after death of tenant for life (query whether of age?) held, did not make good the lease. *Ludford v. Barber*, 1 T. R. 86.

Obligation.

(2) See the obligatory part of a bond, *ante*, p. 77; 73, notes.

case may be], the said messuages, lands, and hereditaments, are pur-
ported to be conveyed by the said (*obligor*) and the said (*infant*) to
the said (*obligee*) and his heirs, in consideration (1) of the sum of
£ part of the said sum of £ paid by him to
the said (*obligor*), and the residue thereof invested in the purchase
of Bank Annuities in the names of certain trustees for the

bonds.

Executors (convey-
ance).

benefit of the said infant. Now THE CONDITION of the above written
obligation is such, that if the said (*infant*) do and shall within the
space of one calendar month next after he shall have attained the
age of twenty-one years, or in case of his departing this life before
he shall have attained that age, then if the heir (2) or heirs at law
of him the said (*infant*) do and shall, within one calendar month
next after his decease, or sooner if may be, at the request and proper
costs and expence of the said (*obligee*), his heirs or assigns, convey
and assure, either to him the said (*obligee*), his heirs or assigns, or
as he or they shall direct, by such deeds and conveyances, or other
acts and assurances in the law, as his or their counsel shall advise,
the moiety or half part of him the said (*infant*), of or in ALL and
singular the said messuages, lands, tenements, and hereditaments,
with the appurtenances, free from all right and title to dower, if any,
of the then wife of the said (*infant*), or of his heirs, and all other
charges, liens, and encumbrances by him or them made or occa-
sioned, and that without any further consideration to be paid by the
said (*obligee*), his heirs or assigns, than is hereinbefore mentioned
for the same. AND ALSO if the said (*obligor*), his heirs, executors,
or administrators, do and shall in the mean time, and until such
conveyances and assurances as aforesaid shall be executed and per-
fected, save, defend, keep harmless, and indemnified the said (*obligee*),
his heirs, executors, and administrators, and his and their goods and
chattels, lands, and tenements, and the messuages, lands, tene-
ments, and hereditaments aforesaid, and the rents, issues, and profits

CONDITION.

(1) Sometimes instead of the purchase-money being invested in the
hands of trustees for the benefit of the infant, as in the case supposed
in the text, it is permitted to remain in the hands of the purchaser upon
his entering into a bond for the payment of it with interest on the infant
attaining the age of twenty-one years, and executing the conveyance.
The form of such a bond will be found *post*.

Money remain-
ing in hand of
purchaser.

(2) If the obligor be the heir of the infant he will upon the infant's
decease be compelled to convey, and not be allowed to forfeit the pe-
nalty, as a bond conditioned to convey lands is considered in equity as
an agreement for that purpose, and a specific performance will be de-
creed. Anon. Mos. 37.

Obligor heir.

BONDS.

Execute (convey-
ance).

of the same from and against all claims and demands to be made thereupon, or in respect thereof, by or on the part or behalf of the said (*infant*), his heirs or assigns, or by or on the part or behalf of any other person or persons rightfully claiming, or having title to claim any estate, right, title, or interest, in, to, or concerning the said premises, or any part thereof, from, through, under, or in trust for him or them, or by, through or with his, their, or any, or either of their default, means, or privity. THEN, &c.

BONDS

Indemnity
(acceptor).

No. CXCVIII.

**A Bond to Indemnify an Accommodation Acceptor or Indorser of
a Promissory Note or Bill of Exchange.*

KNOW ALL MEN, &c. (1) WHEREAS the above bounden (*obligor*), by bill [*or note*] under his hand, dated the day of , hath promised to pay or order, months after date, the sum of £ , with interest thereon until paid. AND WHEREAS the above-named (*obligee*) at the request and for the debt of the said (*obligor*), hath indorsed the said recited bill or note, and hath thereby become chargeable with and for payment of the said sum of £ and interest, at the time therein mentioned, as by the said bill and indorsement will appear. NOW THE CONDITION OF CONDITION. the above written bond or obligation is such that if the said (*obligor*), his executors, administrators, or assigns, do and shall well and truly pay the said sum of £ , for which the said note is so given, and interest thereof, on the day of the payment therein mentioned, and in full discharge thereof, and thereof, and therefrom, and from all actions, suits, charges, payments, and damages by reason thereof, shall and do at all times well and sufficiently save and keep harmless and indemnified the said (*obligee*), his heirs, executors, and administrators, and every of them. THEN, &c.

(1) See *ante*, p. 77.

Obligation.

BONDS.

Indemnity
(administration).

No. CXCIX.

** A Bond to Indemnify a person paying a Debt to a next of Kin before Letters of Administration obtained.*

Recitals.

KNOW ALL MEN BY THESE PRESENTS, &c. (1) WHEREAS the above-named (*obligee*) stands indebted to the estate of (*intestate*), late of, &c. deceased, in the sum of £ , as he doth hereby acknowledge. AND WHEREAS the said (*intestate*) departed this life on or about the day of intestate, and in insolvent circumstances, leaving the said (*widow*) his widow, him surviving. AND WHEREAS the said (*widow*) has solicited the said (*debtor*) to pay to her the said sum of £ , so due from him to the estate of her said late husband deceased, without obliging her to take out letters of administration to his effects, the expense whereof would exhaust great part of the said sum and leave her nearly destitute of support; which in consideration of the premises they have consented to do, on the said (*obligors*) entering into the above written obligation with such condition as is hereunder written; and the said (*obligee*) hath accordingly paid the said sum of £ on the day of the date hereof, as she the said (*widow*) doth hereby acknowledge. NOW THEREFORE the condition of the above-written obligation

CONDITION.

is such, that if the said (*obligors*) or either of them, their or either of their heirs, executors, or administrators, do and shall from time to time and at all times hereafter, well and sufficiently save, defend, keep harmless, and indemnified the said (*obligee*), his executors and administrators, and his and their goods and chattels and lands and tenements, from and against all losses, costs, damages, charges and expenses which he or they shall or may bear, pay, sustain, or be put unto for or by reason of his the said (*obligee*) having paid to the said (*widow*) the said sum of £ , so due from them to the estate of the said (*intestate*) deceased, as aforesaid, or for or by reason of any matter or thing in anywise relating thereto. THEN, &c.

Obligation.

(1) See *ante*, p. 73, and notes there.

BONDS.

Indemnity
(bail).

No. CC.

* *A Bond to Indemnify a person becoming Bail on a Writ of Error.*

KNOW ALL MEN, &c. (1) WHEREAS a verdict in ejectment was obtained in his Majesty's Court of _____, against the above named (*defendants*), upon the demise of (*plaintiff*) gentleman, as plaintiff, at the last summer assizes, held for the county of _____. AND WHEREAS the said (*defendants*) have since brought their writ of error upon the judgment in ejectment, to which bail being required to answer the mesne profits of the lands and premises thereby recovered, the said (*obligee, one of the defendants*) together with (*other defendants*) are become bail to the said writ of error, and are thereby liable to answer and make good all the rents and profits of the said lands and premises so recovered as aforesaid. AND WHEREAS previous to and before the giving such bail as aforesaid he the said (*obligor, one of the defendants*) proposed and agreed to indemnify the said (*obligee*) of and from the same, so far as concerned his the said (*obligor's*) interest in the said lands and premises so recovered, in such manner as hereinafter mentioned. NOW THE CONDITION OF CONDITION. the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors, and administrators, or some or one of them, shall and do from time to time and at all times hereafter, at his and their own proper costs and charges, well and sufficiently save, keep harmless, and indemnified, as well the said (*obligee*), his heirs, executors, and administrators, as also his and their real and personal estates of from and against all and all manner of actions, suits, judgments, executions, costs, charges, damages, and expenses whatsoever, which shall or may at any time hereafter fall, arise, happen, or come

(1) See *ante*, p. 73. Now by the act of 6 Geo. 4. c. 96. No execution shall be stayed upon a judgment in a personal action by writ of error, unless by special order of the court on recognizance, under 3 Jac. 1. c. 8. Obligation.

BONDS.Indemnity
(bail).

to him, them, or any of them, for, by reason or on account of his the said (*obligee*) being one of the bail to the said writ of error as aforesaid, or otherwise howsoever touching or concerning the same so far as relates to the interest of him the said (*obligor*) in the premises so recovered as aforesaid, and of his being one of the defendants therein, and as to his cost, charges, and damages thereby sustained. THEN, &c.

BONDS.

Indemnity
(bastard).

No. CCI.

**A Bond to Indemnify a Parish against the maintenance of a Bastard Child.*

KNOW ALL MEN, &c. (1) WHEREAS (*mother*) of, &c. single woman Recitals.
hath in and by her voluntary examination, taken in writing upon
oath before _____, one of his Majesty's justices of the
peace, acting in and for the said county of _____, declared that
she is with child, and that the said child is likely to be born a bastard
and to be chargeable to the said parish of _____. AND
hath also in and by her said examination charged the above bounden
(*father*) with having gotten her with child of the said child, and
declared that he is the true and only father thereof (2). AND
WHEREAS the said (*obligors*) have agreed and undertaken to dis-
charge and indemnify the said parish of _____ from all costs
and expenses from or on account of such child. NOW THEREFORE THE CONDITION.
CONDITION of the above written obligation is such, that if the said
(*obligors*), or any or either of them, or either of their heirs, executors,
or administrators, do and shall from time to time and at all times
hereafter well, fully and absolutely indemnify and save harmless, as
well the above named churchwardens and overseers of the poor of the
said parish of _____, and their successors for the time being,
as also all and singular other the parishioners and inhabitants of the
said parish of _____, for the time being, of and from all man-
ner of costs, taxes, rates, assessments, charges, demands, and ex-
penses whatsoever, for or by reason of the maintenance of the said

(1) See *ante*, p. 73, and notes there.

(2) If the bond be given after the birth of the child, say,
"Whereas (*mother*), single woman, was on the _____ day of
_____, delivered of a _____ bastard child in the parish of _____,
and hath charged the above bounden (*obligor*) with and declared him
to be the true and only father thereof, which said bastard child is
now become chargeable to the said parish of _____."

BONDS.Indemnity
(bastard).

(*mother*) during the time, now to come, of her pregnancy, and for or by reason of the birth, maintenance, and education of the said child, wherewith she is now pregnant as aforesaid; and also of and from all actions, suits, charges, and demands whatsoever touching or concerning the same. AND also if the said (*obligor*), when he shall be thereunto required by any of the parish officers of the parish of aforesaid, for the time being, shall appear before a justice of the peace, and then and there upon oath before such justice declare how and where the said bastard child is provided for, kept and maintained, or in case of its death the time and place of its burial. THEN, &c.

BOND.Indemnity
(bill lost).

No. CCII.

**A Bond under 9 and 10 W. 3. c. 17. in the case of a Lost Bill to obtain from Drawer another Bill (1).*

KNOW ALL MEN, &c. (2) WHEREAS a bill of exchange dated on Recital. or about the day of , now last past, was drawn by the above named (*drawer*) on and accepted by (*acceptor*), whereby the said (*drawer*) requested the said (*acceptor*) two months after the date thereof, to pay to the order of the said (*drawer*) the sum of £ for value received, and which said bill was indorsed by the said (*acceptor*) to the above bounden (*obligor*), who claims to be entitled to receive payment of the said sum. AND WHEREAS the said bill of exchange hath been lost by the said (*obligor*) within the time thereby limited for the payment of the same, he hath, in pursuance of the statute in such case made and provided, applied to the said (*drawer*), as drawer of the said bill, to give him another bill of the same tenor with the said first mentioned bill, which he hath agreed to do. Now THEREFORE, in pursuance of the said statute, CONDITION. the condition of this obligation is such, that if the above bounden (*obligor*) shall from time to time and at all times hereafter well and sufficiently indemnify and save harmless the said , his executors and administrators, against all persons whatsoever, in case the said first mentioned bill of exchange so lost or miscarried shall be

(1) See *ante*, p. 73, if with surety, and p. 77 if without.

(2) It is provided by the act 9 and 10 Wil. 3. c. 17. that in case of an inland bill, payable after date, and expressed to be given for value received, be lost before it is payable, the drawer or acceptor may be required to give another of the same tenor and date on being indemnified. The usual species of indemnity offered in such cases is a bond in the above or a similar form. But it should be observed, that it has been much doubted whether the acceptor is compellable at law to accept of such an indemnity; see observations of Eldon, Chancellor, in *ex-parte Greenway*, 6 Ves. 812. A court of equity will however, on refusal to pay or accept of a sufficient indemnity, decree payment with costs, and see *post*. No. CCIII.

Obligation.
9 and 10 Wil-
liam 3.

BONDS.Indemnity
(bill lost).

found, and from and against all payments, actions, suits, costs, charges, damages, expenses, interests, claims, and demands whatsoever, both at law or in equity, which shall or may at any time or times hereafter arise, happen, or accrue to or against the said (*obligee*), his executors, administrators, or assigns, or to or against any other person or persons, by reason or on account of the loss, miscarriage, or mislaying of the same, or of the same having been found by or appearing in the possession of any other person or persons. THEN, &c.

BONDS.

*Indemnity
(bill lost).*

No. CCIII.

* *A Bond of Indemnity on paying a Lost Bill (1).*

KNOW ALL MEN, &c. (2) WHEREAS a certain draft or bill was drawn on or about the day of last past, by (*drawer*) upon, and accepted by the said (*acceptor*), for the sum of £ , payable days after the date thereof to the order of (*obligee*) who indorsed the same, and which was afterwards paid to Messrs. (*obligors*), whose clerk has lost or mislaid the said bill [*as the case may be*]. AND WHEREAS the said (*obligee*), at the special instance and request of the said (*obligors*), hath agreed to pay them the amount of the said bill, on being indemnified by them for so doing in manner hereunder mentioned. NOW THEREFORE the condition of the above written obligation is such, that if the said (*obligors*), any or either of them, their, any or either of their heirs, executors, or administrators, do and shall at all times hereafter well and sufficiently save, defend, keep harmless, and indemnify the said (*acceptor*), and also the said (*drawer*), and all and every other person or persons lawfully interested in the said draft or bill, and each and every of them, their, each and every of their heirs, executors, and administrators, and their, each and every of their lands, tenements, goods, chattels, and effects of, from, and against all payments, accounts, suits, actions, costs, charges, damages, expenses, claims, and demands whatsoever, both at law and in equity, which shall or may at any time or times hereafter arise, happen, or accrue, or be had, made, moved, brought, commenced, sued, or prosecuted against the said (*acceptor*) and (*drawer*), or either of them, their, any or either of their executors or administrators, or against any other person or per-

(1) See *ante*, p. 107. n. (2).(2) See *ante*, p. 73, and notes.

BONDS.Indemnity
(bill lost).

sons whomsoever, liable to pay the same, by reason, means, or on account of the loss or mislaying of the said draft or bill, or of the said (*obligee*) having paid the amount thereof unto the said (*obligor*), without having delivered the same up to be cancelled, or for or on account of any thing in anywise relating thereto. THEN, &c.

BONDS.

Indemnity
(bond lost).

No. CCIV.

**Bond for delivering up a Lost Bond or other Special Security when found, and to indemnify in the meantime.*

KNOW ALL MEN, &c. (1) WHEREAS the above named (*obligees*), *Recitals.* by a bond or obligation [*or as the case may be*] bearing date on or about the day of , which was in the year 18 , became bounden unto the above bound (*obligor*) in the penal sum of £ , conditioned for payment of the sum of £ , on a day then named, with interest for the same in the mean time, after the rate of £5 per centum per annum of lawful money of Great Britain. AND WHEREAS the said (*obligor*) having alledged that the said bond or obligation is lost or mislaid and cannot be found, the said (*obligee*) hath, at or before the sealing hereof, at the request of the said (*obligor*), given the said (*obligor*) another bond or obligation bearing even date with the above written obligation, for the payment of the said sum of £ , on the day of , which will be in the year , together with interest for the same in the mean time, after the rate aforesaid (being the same principal and interest money, and time of payment, at and for which the said in part recited bond was given), upon the promise of the said (*obligor*) to indemnify him against the said last mentioned bond by the above written obligation. NOW THE CONDITION of the above written CONDITION. obligation is such, that if the said (*obligor*), his heirs, executors, or administrators, do and shall, and as soon as the said above in part recited bond or obligation shall be found, deliver up the same unto the said (*obligee*), to be cancelled and made void. AND do and shall at all times hereafter, in the mean time, save and keep harmless and indemnified the said (*obligee*), his heirs, executors, and administrators, and his and their lands, tenements, goods, chattels, and

(1) See form of obligation, *ante*, p. 77, and 73, notes.

BONDS.Indemnity
(bond lost).

effects, and every of them, from and against the said in part recited bond or obligation, and from all actions and suits, cause and causes of actions and suits, costs, charges, damages, and expenses whatsoever, which he or they shall or may sustain or be put unto, for, by reason, or on account of the said bond or obligation in any manner or wise. THEN, &c.

BONDS.

Indemnity
(costs).

No. CCV.

**A Bond to Indemnify an unwilling Plaintiff or Defendant against Costs of a Suit.*

KNOW ALL MEN, &c. (1) WHEREAS A. D. of, &c. [*recite preliminary matter*]. AND WHEREAS the said (*obligor*) hath agreed to pay all such costs and expenses of the said suit, and to save the said (*obligee*) harmless from all costs and expenses already incurred or hereafter to be sustained by reason of his being made a party to [*or defendant in*] the said action [*or suit*]. AND also that the said (*obligor*) shall take upon himself the prosecution [*or defence*] of the same, and of any future action or suit concerning the matters aforesaid. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors and administrators, do and shall from time to time, and at all times, well and duly pay and satisfy unto the said (*obligee*), his executors or administrators, or unto his attorney or solicitor, all such costs and charges as shall, can or may, at any time or times, be demanded of or from the said (*obligee*), his executors or administrators, for the said prosecution [*or defence*] of the said action at law [*or the said suit in equity*] now depending in the said court of , or any wise relating thereto, and do and shall well and sufficiently save, defend, keep harmless and indemnified the said (*obligee*), his executors and administrators, and his and their lands and tenements, goods and chattels, from and against all costs, charges, damages and expenses whatsoever, which he or they shall or may, at any time or times suffer, sustain or be put unto in the prosecution [*or defence*] of the said action [*or of the said suit*] or in the prosecution [*or defence*] of any other action or suit whatsoever which may be prosecuted or commenced by the said (*obligor*) [*or against the said obligee*], his heirs, executors or administrators, in relation to the said matters or things, or in any way concerning the same. THEN, &c.

(1) See *ante*, p. 77, and 73, notes.

Obligation.

BONDS.Indemnity
(covenants).

No. CCVI.

**A Bond to Indemnify a Master on discharging his Apprentice
against Covenants in the Articles.*

Recital.

KNOW ALL MEN, &c. (1) WHEREAS (*apprentice*), son of the above bound (*obligor*), by indenture of apprenticeship bearing date on or about the day of bound himself unto the above named (*obligee*) to serve him as an apprentice for the term of years from the date of the said indenture, upon the terms therein mentioned, as in and by the said indenture of apprenticeship will more fully appear. AND WHEREAS the said (*obligee*), by the desire of the said (*apprentice*), and with the consent and approbation of the said (*obligor*), hath agreed to discharge his said apprentice from his service, and permitted him to relinquish his said apprenticeship, and hath cancelled the said indenture, upon the execution of the above

CONDITION.

written obligation to him by way of indemnity. NOW THE CONDITION of this obligation is such, that if the above bounden (*obligor*), his heirs, executors or administrators, do and shall from time to time, and at all times hereafter, save, defend, keep harmless and indemnified the said (*obligee*), his executors and administrators, and his and their goods and chattels, and lands and tenements, from and against all and every the covenants, declarations and agreements in the said in part recited indenture of apprenticeship contained on the part of the said (*obligee*), his executors or administrators, and which are or were to be performed or observed, and from and against all and every action and actions, suit and suits, costs, charges, damages and expenses whatsoever, which shall or may be prosecuted, brought, commenced or happen or be occasioned to him or them, for or by reason, or under or by virtue of the said indenture, or any of the covenants,

Obligation.

(1) See *ante*, p. 77, and 73, notes.

declarations or agreements therein contained, relating to or concerning any matter or thing to be henceforth or hereafter performed or observed as aforesaid, or for or by reason of any sum or sums of money by him the said (*obligee*) received with the said (*apprentice*) by way of premium or otherwise, or for the repayment or return thereof, or of any part thereof, or in relation to any of the said matters or things, or any of them. THEN, &c.

BONDS.

Indemnity
(*covenants*).

BONDS.

Indemnity
(*debts*
copartnership).

No. CCVII.

**Bond from a surviving Partner to Indemnify the Executor of a deceased Partner from Debts.*

Recital.

KNOW ALL MEN, &c. (1) WHEREAS the above named (*obligee*), executor of (*deceased partner*), late of, &c. by indenture under his hand and seal, bearing even date with the above written obligation, (in pursuance of a covenant in that behalf contained in certain indentures of copartnership, bearing date on or about the day of , in the year , and made between, &c.) (*or as the case may be*) hath assigned and released unto the said (*surviving partner*) for his own proper use, the one full and equal half part, and all other the part and share belonging to him the said (*obligee*) as executor as aforesaid, of, in, and to the goods, debts, monies, and things belonging to the said joint stock in trade between the said parties at the time of the decease of the said (*deceased partner*), as by the said indenture of assignment and release, relation being there-

CONDITION.

unto had, will more fully appear. Now THE CONDITION of the above written obligation is such, that if the said (*obligor*), his executors and administrators, do and shall, pursuant to the covenants in that behalf contained in the said indentures of copartnership, discharge and at all times hereafter save and keep harmless and indemnified the said (*executor*), his heirs, executors, and administrators, and his and their lands, tenements, goods, and chattels, and the lands, tenements, goods, and chattels of the said (*deceased partner*) deceased, of and from all and every the debts and sums of money which at the time of the decease of the said (*deceased partner*) were due and owing by and from the said partners, and which on the day of the date hereof are yet due, owing, and undischarged to all or any person or persons whatsoever, upon account of the said late joint trade

Obligation.

(1) See form of obligation, *ante*, p. 77, and 78, notes.

and copartnership, and of, from, and against all and all manner of actions, suits, costs, charges, and damages which shall or may be commenced, sued, prosecuted, recovered, or awarded against the said (*executor*), his executors or administrators, or which he or they may sustain or be put unto for or by reason of the said debts and sums of money, or any of them in anywise howsoever. THEN, &c.

BONDS.Indemnity
(debts
copartnership).

BONDS.Indemnity
(defect of title).

No. CCVIII.

A Bond to a Purchaser as an Indemnity against a Defect of Title.

Recital of conveyance to obligee.

KNOW ALL MEN, &c. (1) WHEREAS by indentures of lease and release, the lease bearing date the day next before the date of the release, and the release bearing or intended to bear even date herewith, and made or expressed to be made, between, &c. certain messuages, farms, lands, and hereditaments therein described, and mentioned to be situated at, &c. were granted, and released, or otherwise assured by the said (*obligor*) unto and to the use of the (*obligee*), his heirs and assigns for ever (*or as the case may be*). AND WHEREAS since the execution of the said indenture it has been discovered or conjectured that some legal or other interest in or concerning the said hereditaments is outstanding and subsisting in _____ or elsewhere,

CONDITION.

and it has therefore been proposed and agreed that the said (*obligor*) shall give his bond, with such condition as hereafter mentioned, for indemnifying the said (*obligee*) against all claims or demands which may hereafter be made in respect thereof. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, save harmless and keep indemnified the said (*obligee*), his heirs (2), executors, administrators, and assigns, from and against the said (*obligor*), his heirs and assigns, and also from and against all and every legal and equitable estate, right, title, interest, claim and demand whatsoever to be at any time or times hereafter made, challenged, or demanded by any person or persons whomsoever, in, to, or out of the messuages, farms, lands, and hereditaments, in or by the said in part recited indentures of lease and release, or either of them, granted and released, or otherwise as-

Obligation.
Leasehold.(1) See *ante*, p. 77, and 73, notes.

(2) If the estate be leasehold, omit the word "heirs" here and throughout, when applied to the obligee.

BONDS.

Indemnity
(defect of title).

sured or intended so to be, or in, to, out of, or respecting any part thereof, or their appurtenances; and of, from, and against all loss, costs, charges, damages, and expenses which he the said (*obligee*), his heirs, executors, administrators, or assigns, shall or may pay or sustain, by means or in consequence of any such estate, right, title, interest, claim or demand, so and in such manner that he the said (*obligee*), his heirs, executors, administrators, and assigns, shall and may at all times hereafter have, hold, and enjoy the same messuages, farms, lands, and hereditaments, with their appurtenances, and receive and retain the rents, issues, and profits thereof, without any let, suit, hindrance, interruption, or denial of or by the said (*obligor*), his heirs, executors, administrators, or assigns, or of any other person or persons whomsoever. THEN, &c.

BONDS.

Indemnity
(dower).

No. CCIX.

Bond from Vendor or other Grantor to Indemnify a Purchaser or Grantee against a Wife's Dower (1).

KNOW ALL MEN, &c. (2) WHEREAS (3) the said (*obligee*) hath purchased of the said (*obligor*) [or the said *obligor* has borrowed of the said (*obligee*) the sum of £ upon the security of, &c. or *as the case may be*] certain freehold hereditaments situated at , particularly described in certain indentures of lease and release, the lease bearing date the day next before the release, and the release bearing even date with the above written obligation; and by the same indentures the same hereditaments have been or are expressed or intended to be conveyed to him the said (*purchaser*) and his heirs, free from encumbrances. AND WHEREAS (*wife*) the wife of the said (*vendor*) hath a title to dower in the said hereditaments, but she being of great age and the premises of small value, the said (*purchaser*) hath agreed to accept of the security of the above written obligation in lieu of a fine being levied of the said premises. NOW THE CONDITION of the above written obligation is such, that if the said (*vendor*), his heirs, executors or administrators do and shall from time to time, and at all times hereafter, well and

CONDITION.

Covenant.

(1) A bond seems preferable to a covenant for this purpose; see *Wilson v. Knolly*, 7 East, 128.

Obligation.

(2) For the form of the obligatory part of a bond, see *ante*, p. 77, and 73, notes.

Recitals.

(3) As the extent of the condition of an indemnity bond may, on account of the strictness with which such bonds are construed, be restrained by the recitals, though the words of the condition import a larger liability than the recitals contemplate, *Pearsall v. Summersett*, 4 Taunt. 593, unless where nothing is mentioned in the condition but what relates to the matter recited, *Sansom v. Bell*, 2 Campb. 39; *Liverpool Waterworks v. Atkinson*, 6 East, 507. S. C. 2 Smith, 654. S. C.; it is proper that such recitals should be made as may serve to shew the real intent of the parties.

effectually protect, save harmless and keep indemnified him the said (*purchaser*), his heirs, executors, administrators, and assigns, and his and their estates and effects, and in particular the hereditaments and premises comprised in the said in part recited indentures of lease and release [*or as the case may be*], and every part and parcel thereof, and the rents, issues, and profits of the same, of, from, and against all and all manner of any estate, right, or title of, in, or to dower, at the common law, or by the custom, or otherwise howsoever, to which she the said (*wife*) now or at any time hereafter (1) shall or may be entitled to, in, out of, or in relation to the said hereditaments or any part thereof, as the widow or relict of the said (*vendor*); and also of, from and against all and all manner of actions, suits, proceedings, and claims and demands whatsoever, both at law and in equity, or otherwise, of or by her the said (*wife*), her executors, administrators, or assigns, for or in respect thereof, and all costs, charges, damages, and expences by reason of or in relation thereto. THEN, &c.

BONDS.

Indemnity
(dower).

(1) If the bond be given to a mortgagee, add

Mortgagee.

“So long as the said principal and interest money or any part thereof shall remain as security upon the said premises.

BONDS.

Indemnity
(ground rent).

No. CCX.

**A Bond to Indemnify a Purchaser, or other person, against Ground Rents chargeable upon Premises.*

KNOW ALL MEN, &c. (1). WHEREAS, &c. [*recite original lease and under lease made subject to ground rents, and agreement for indemnity*].

CONDITION. NOW THEREFORE THE CONDITION of the above written obligation is such, that if the said (*obligor*), his heirs, executors or administrators, do and shall from time to time, and at all times hereafter, well and truly pay or cause to be paid, or otherwise well and effectually protect, defend, save harmless and keep indemnified the said (*obligee*), his executors, administrators and assigns, and his, their and every of their goods and chattels, and lands and tenements, from and against the said ground rent or annual sum of £ ; and from and against all and all manner of actions, suits, distresses, entries, losses, costs, charges, expenses and damages whatsoever, which he the said (*obligee*), his executors, administrators or assigns, shall or may sustain or be put unto, through or by reason of any neglect or default in payment thereof, or of any part thereof, or for or on account of him the said (*obligee*), his executors, administrators or assigns, subtracting or withholding any part or proportion of the rent or annual sum in or by the said lastly in part recited indenture of lease, reserved so that such rent or money to be so subtracted or withheld do not at any time exceed, and be for the only and sole purpose of paying and satisfying the said ground rent, or other annual sum then lawfully due and payable, and for interest, he the said (*obligee*), his heirs, executors or administrators, shall be liable to pay, under or by virtue of the said firstly hereinbefore in part recited indenture [*or order of assignment*] of lease, for or in respect of the said premises, and so that the same rent or sum so to be subtracted or withheld, be actually *bonâ fide* paid and applied in satisfaction of the said

ground rent or annual sum aforesaid; and moreover, if the said (*obligor*), his heirs, executors and administrators, do and shall from time to time, and at all times hereafter, well and truly pay, or cause to be paid forthwith unto the said (*obligee*), his executors, administrators and assigns, all such sum and sums of money as he the said (*obligee*), his executors, administrators or assigns, shall, by suit or action, or other proceedings at law or in equity, be compelled or compellable to pay, or shall actually pay, for or in respect of such ground or other rent aforesaid, over and above the rent and sum reserved or made payable by the hereinbefore secondly in part recited indenture of lease, or indenture of assignment, or on account of any such subtraction or withholding of such rent or sum as aforesaid, or for or on account of his or their paying or having paid the said ground rent or annual sum of £ , or any part thereof, or any other matter or thing relative to all, any or either of the premises aforesaid. THEN, &c.

BONDS.Indemnity
(ground rent).

BONDS.

Indemnity
(name in trade).

No. CCXI.

**Bond to Indemnify a retiring Trader permitting his name to be used by his successor.*

KNOW ALL MEN, &c. (1). WHEREAS, &c. [*recite the facts*]. AND WHEREAS the above named (*obligee*), at the request of the above bounden (*obligor*), hath consented, that during the term of years from the date of the above written obligation, he shall use the name of him the said (*obligee*) in and for carrying on the said trade or business, in order the better to preserve the same, upon being indemnified by means of the above written obligation against all damages by reason thereof. NOW THEREFORE THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors or administrators, do and shall well and effectually save harmless and keep indemnified him the said (*obligee*), his executors and administrators, and his and their goods and chattels, of, from, and against all and all manner of actions, suits, cause and causes of actions and suits, and all loss, costs, charges, damages, expenses and detriment whatsoever, by reason or on account of the said (*obligor*), his executors or administrators, using and exercising the said trade or business, and dealing therein in the name of him the said (*obligee*) as aforesaid, or by reason or on account of any matter or thing relating thereto in any manner howsoever. THEN, &c.

(1) See *ante*, p. 77, and p. 73, notes.

BONDS.

Indemnity
(sheriff's levy).

No. CCXII.

**Bond to Indemnify a Sheriff on his selling Goods under an Execution.*

KNOW ALL MEN, &c. (1). WHEREAS a writ of *testatum fieri facias* was issued out of the Court of _____ at Westminster, returnable on, &c. at the suit of (*plaintiff*) against (*defendant*) of, &c. directed to the sheriff of _____ above named, whereby the said sheriff was commanded to levy, of the goods or chattels of the said (*defendant*) within his bailiwick, the sum of £ _____ debt, and £ _____ for damages, costs and charges, with an indorsement upon the said writ to levy the sum of £ _____, besides sheriff's poundage, officers' fees, and all other incidental charges and expenses attending the levy. AND WHEREAS the said sheriff, upon receipt of the said writ, by the desire of the said plaintiff, directed his warrant to (*officer*), his officer, to levy the said debt and damages upon the goods of the said defendant, and by virtue thereof the said officer did take possession of divers goods and chattels in the house of, or occupied by, the said defendant, situate at, &c. _____ aforesaid, but which said house and goods, save the occupation thereof by the said defendant, he the said defendant alleges were the property and effects of _____ of, &c., and not of him the said defendant; the same having, before the issuing of the said execution, been *bonâ fide* sold by the said defendant unto the said _____ for a valuable consideration in money, and by bill of sale thereof conveyed to him for his own use [*or as the case may be*], (the same being contained in a schedule annexed to the said bill of sale,) and notice hath accordingly been given to the said sheriff that the said goods and effects are not the property of the said defendant. AND WHEREAS the said plaintiff, on the contrary, alleges that the whole of the said goods and effects in and about the said house were and are the property of _____

Recital of writ,
&c.

(1) See *ante*, p. 73, and notes there.

Obligation.

BONDS.Indemnity
(sheriff's levy).

the said defendant, and subject to the said execution. [AND WHEREAS the said sheriff has (*if the case was so*) been served with a rule to return the said writ of *testatum fieri facias*, and an application has been made to the Court of King's Bench, on the part of the said sheriff, to discharge the said rule, and a rule to shew cause was thereupon granted, and upon shewing cause on behalf of the said plaintiff, a rule was made for discharging the said rule, to shew cause upon the plaintiff's indemnifying the said sheriff.] AND WHEREAS the said sheriff [in pursuance of the said rule, and] at the request of the said plaintiff, and upon being indemnified as above and hereinafter is mentioned, has agreed to proceed to the sale of the said goods and effects, and thereupon to return the said levy in pursuance of the said writ. NOW THEREFORE the condition of the above written obligation is such, that if the said (*obligors being plaintiff and sureties*), or any or either of them, their, or any or either of their heirs, executors or administrators, shall and do well and truly save harmless and keep indemnified the said sheriff, his executors and administrators, and also the under sheriff, and the said (*officer*), and all other the officers and assistants of the said sheriff in the said execution, of, from and against all costs, charges, damages and expenses, which he or they, or any or either of them, their, or any or either of their heirs, executors or administrators, shall or may be put unto, bear, pay or sustain, or be liable to bear, pay or sustain, for or by reason of the entering into the said house and premises of the said (*defendant*), and taking possession of the said goods and effects as aforesaid, or for or by reason of the continuing in the possession thereof, or the selling and disposing thereof, or making a return to the said writ of *testatum fieri facias*, that the said sheriff has levied by virtue thereof the sum for which the said goods and effects are and shall be sold, after deducting all the usual and reasonable charges attending the said levy, and keeping possession, and of the sale; and also of, from and against all costs, charges, damages and expenses which the said sheriff or under sheriff, or his officers or assistants, or any or either of them, shall be put unto, or shall bear, pay or sustain for or by reason of any action or actions, suit or suits, which shall or may be at any time hereafter brought or prosecuted against the said sheriff, under sheriff or officers, for or by reason of the taking or continuing the possession of the said goods or effects, or any part thereof, or the selling or disposing thereof, or of any part thereof [or for or by reason of any motion or motions made or to be made to the said Court of King's Bench], or in any other manner howsoever relating thereto. THEN, &c.

BONDS.

{Indemnity
(sheriff's levy
money).

No. CCXIII.

**A Bond to Indemnify a Sheriff on paying over to a Creditor money levied under an Execution.*

KNOW ALL MEN, &c. (1). WHEREAS a writ of *feri facias* was issued ^{Recital of writ, &c.} out of his Majesty's Court of King's Bench at Westminster, and there returnable on the, &c. directed to the sheriff of during the shrievalty of the said (*late sheriffs*) wherein (*plaintiff*) is the plaintiff, and (*defendant*) is the defendant, commanding the said sheriff to cause to be made of the goods and chattels of the said (*defendant*) in his bailiwick the sum of £ , which the said (*plaintiff*) recovered against him in the said court for a debt, and also £ awarded to the said (*plaintiff*) for his damages, as well by the detaining the said debt, as for costs and charges by him about his said suit, which said writ of *feri facias* is marked on the back thereof to levy £ besides sheriffs' poundage, officers fees, and charges of levy; and by virtue of such writ the said late sheriff, by (*officer*) his officer, seized and took possession of divers goods and chattels of the said (*defendant*), and kept possession thereof until the said (*debtor*) paid to the said late sheriff the said sum of £ and the poundage thereof, together with the costs and charges of the said levy, and the said sum of £ now remains in the hands of the said late sheriff. AND WHEREAS the said late sheriff, on the said sum of £ being paid to him, received a notice to (*defendant's attorney*) the attorney of the said defendant in the said action, purporting that the said Court of King's Bench would be moved on the day of Michaelmas term then next, or so soon after as counsel could be heard, that the said sum of £ so levied by the said late sheriff as aforesaid might be restored to the said defendant, and that the said writ of *feri facias*, and all proceedings thereon, might be set aside, and requiring the

(1) See *ante*, p. 73, and notes there.

Obligation.

BONDS.

*Indemnity
(sheriff's levy
money).*

CONDITION.

said late sheriff in the mean time to retain the said money in his hands. AND WHEREAS the said (*plaintiff*) having insisted that the said sheriff ought and is bound to pay over to him the said sum so levied as aforesaid, after deducting all expenses, and reasonable and usual charges, he the said late sheriff hath consented and agreed so to do, upon the said (*defendant*), together with the said (*his surety*), undertaking and agreeing to return back and restore to him the said sum, in case the said Court of King's Bench shall make any rule or order for that purpose, and to indemnify him in the manner hereinafter mentioned; and the said late sheriff, by the said (*officer*) his officer, hath accordingly paid over the said sum of £ to him the said (*plaintiff*). NOW THE CONDITION of the above obligation is such, that if the above bounden (*obligors, being the plaintiff and his sureties*) their heirs, executors and administrators, or any or either of them, do and shall well and truly pay back, return or restore the said sum of £ to the said late sheriff, or to the said (*defendant*), or otherwise, as the said Court of King's Bench shall or may order or direct, and agreeably to and in compliance with any rule or order of the said court to be made for that purpose, and also do and shall well and truly pay to, and save harmless and keep indemnified the said late sheriff and his under sheriff, and the said (*officer*) his officer, and all and every other the officers of the said late sheriff employed in the execution of the said writ of *feri facias*, them, and each and every of them, and every of their executors and administrators, of, from and against all payments, sum and sums of money, losses, costs, charges, damages and expenses which he, they or any or either of them shall or may bear, sustain or be put unto, for or on account or by reason of his or their having paid over the said sum of £ to the said (*plaintiff*) contrary to the said notice from the said (*defendant*), or for or by reason or means of any action or actions, suit or suits, motion or motions, which shall or may be had, brought, commenced, sued, prosecuted or made against the said late sheriff, or his under sheriff, or the said (*officer*) his officer, or any other of the officers or agents of the said late sheriff employed in the execution of the said writ, by the said (*defendant*), his executors or administrators in regard thereto. THEN, &c.

BONDS.

Indemnity
(surety).

No. CCXIV.

A Bond of Indemnity to a Surety bound for the Obligor (1), for payment of a sum of money (2).

KNOW ALL MEN, &c. (3). WHEREAS the above named (*surety*), Recitals.
 at the request of the above bounden (*obligor*), in and by a certain bond or obligation in writing bearing even date with the above written obligation, became bounden together with the said (*obligor*) unto A. B. of, &c. in the penal sum of £ , for securing the payment unto the said A. B. of the sum of £ , with interest for the same at the rate of £5 per cent. per annum, on the day of next ensuing the date of the said in part recited bond, AND WHEREAS the said (*obligor*) being desirous of saving harm-

(1) Where a counter-bond is given to a surety who eventually pays the debt of his principal, he has an action at law against his principal for the amount, and in case of bankruptcy may prove it under the commission, *ex parte* Cockshott, 3 Brow. Ch. Ca. 502. and may even compel the obligee to prove, who will be a trustee for him of the dividend. *Ex parte* Rushworth, 10 Ves. 409. But the security for which the debt was given becomes void, and the surety without such bond is merely a simple contract creditor of the principal; the rule in equity that a surety is to have the benefit of all securities which the creditor has against the principal, being limited to such securities as continue to exist. *Copis v. Middleton*, 1 Turn. 221; hence the expediency of a surety taking a counter security. Surety's remedy
against principal.

(2) A surety may always compel the principal to relieve him of his responsibility by payment of the debt, where it is a bond for payment of money, but where the bond is given to protect against the consequences of future contingencies, as in the case of a bond of indemnity for fidelity, or to account, the surety will not be entitled to exonerate himself, or to compel the principal to make any provision for preventing the surety being thereafter damaged, unless by means of a counter-bond, or other security for that purpose given at the time; and see *Antrobus v. Davidson*, 3 Meriv. 569; also *ante*, p. 73, notes.

(3) See the form of this obligation, *ante*, p. 77; as to which it may be observed, that a surety is in no case liable beyond the penalty of the bond, however large the debt and costs. *Antrobus v. Davidson*, *ub. sup.*

BONDS.Indemnity
(surety).

CONDITION.

less the said (*surety*) against any loss or detriment which he may sustain by reason of his having so become such surety as aforesaid, hath agreed to enter into the above written obligation with such condition for making void the same as hereinafter is expressed. Now

THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid unto the said A. B. his executors, administrators or assigns, the said sum of £ , with interest for the same after the rate of £ 5 per cent. per annum, on the day of next ensuing the date of the said recited obligation, according to the true intent and meaning of the condition thereunder written, and in full discharge and satisfaction of the said bond or obligation; and if the said (*obligor*), his heirs, executors or administrators, shall and do from time to time, and at all times hereafter, save, protect, keep harmless and indemnified him the said (*surety*), his heirs, executors and administrators, and his, their and every of their lands and tenements, and goods and chattels, of, from and against the said sum of £ and interest, and all other sums of money, costs, charges, damages and expenses whatsoever [which he the said (*surety*), his heirs, executors or administrators, or any or either of them, shall or may, at any time or times hereafter, bear, sustain or be put unto, or become liable to pay], by reason or on account of the said in part written bond or obligation, or any matter or thing in any wise relating thereto. THEN, &c. or else, &c.

BONDS.

Indemnity
(surety).

No. CCXV.

* *A Bond to Indemnify a Surety (1) from the payment of an Annuity.*

KNOW ALL MEN, &c. (2) WHEREAS, &c. [*recite bond and other securities*]. AND WHEREAS the said (*obligor*), in consideration of the said (*obligee*) being no otherwise made party to the above mentioned securities than as surety for the said (*obligor*), and having joined therein out of friendship only to the said (*obligor*), he the said (*obligor*) is desirous to indemnify him from any loss or detriment which may arise to him therefrom, and hath accordingly agreed to enter into the above written obligation for that purpose. NOW THE CONDITION. CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors, or administrators, do and shall from time to time-at all times hereafter, well and effectually keep harmless and indemnified the above named (*obligee*), his heirs, executors, administrators, and assigns, their and every of their lands, tenements, goods, chattels, and effects, of, from, and against the above in part recited indenture and bond or obligation, and the judgment to be entered up thereon in pursuance of the said warrant of attorney; and of, from and against all and any sum and sums of money, payment and payments whatsoever, which shall or may become due or payable, or which are or is secured or intended to be secured or made payable thereby or by virtue or in consequence thereof or of either of them, or of the said annuity, yearly rent-charge or annual sum thereby or by either of them granted, secured or made payable, or any arrears or default in payment thereof, or any part or proportion thereof, by the said (*obligor*), his heirs, executors, or administrators; and of, from and against all, every and all manner of action and actions, suit and suits, process and processes, proceed-

(1) See notes, *ante*, p. 129.

(2) See *ante*, p. 77, and p. 73, notes.

BONDS.Indemnity
(surety).

ing and proceedings, and cause and causes thereof whatsoever, whether at law or in equity, costs, charges, damages, expenses, claims, demands, and detriment which he the said (*obligee*), his heirs, executors, administrators, or assigns shall or may sustain or be put unto through, by reason or in respect of the said annuity or yearly sum, indenture, bond, warrant of attorney, and judgement, or any or either of them. THEN, &c.

BONDS.

Indemnity
(surety).

No. CCXVI.

**Bond to Indemnify a Surety against Bills of Exchange accepted by him for the benefit of Creditors of the Obligor (1).*

KNOW ALL MEN, &c. (2) WHEREAS the above bounden (*obligor*) is indebted to the several persons whose names are mentioned in the schedule hereunder written as creditors, in the sums set opposite to the respective names, which he is at present unable to pay. AND WHEREAS the said creditors have agreed to accept of the several bills of exchange mentioned in the said schedule, for payment thereof, drawn by the said (*obligor*) upon and accepted by the said (*obligee*), payable at, &c. (*or as the case may be*), AND which said bills of exchange have been so accepted or indorsed by the said (*obligee*) accordingly, and delivered to the said creditors respectively, whereby he is become liable to pay the said several sums therein mentioned at the times aforesaid. AND WHEREAS the said (*obligor*) has agreed to execute the above written obligation for indemnifying the said (*obligee*) against any loss which he may sustain by reason of his said acceptances or indorsements. NOW THEREFORE THE CONDITION of this obligation is such, that if the above bounden (*obligor*), his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid the several and respective bills of exchange mentioned in the said schedule hereunder written, as and when the same respectively shall become due and be payable, or do and shall pay and deposit to and with the said (*obligee*) the several sums of money in the said bills of exchange respectively mentioned, on or before the day next preceding the day or time of their respectively becoming due and payable. AND also do and shall from time to time and at all times hereafter well and sufficiently save harmless and keep indemnified the said (*obligee*), his heirs, executors, and administrators, and his and their lands,

(1) See *ante*, p. 129, n. (2).

(2) See form of obligation, *ante*, p. 77, and p. 73, notes.

Obligation.

BONDS.Indemnity
(surety).

tenements, goods, and chattels, of and from the payment of the same and of every of them, by or with his own proper monies or effects, and from and against all and all manner of actions, suits, costs, charges, expenses, and damages whatsoever, which he the said (*obligee*), his heirs, executors, or administrators, or any or either of them shall be liable to incur or sustain through or by reason of the said several bills of exchange or any or either of them in any manner howsoever. THEN, &c.

SCHEDULE

ABOVE REFERRED TO

BONDS.

Indemnity
(surety).

No. CCXVII.

**A Bond to Indemnify a Surety on the Obligor's admittance into one of the Inns of Court (1).*

KNOW ALL MEN, &c. (2). WHEREAS the above named (*obligee*, Recital of surety's bond. *being surety*) at the request of the above bound (*obligor*), by a certain bond or obligation in writing, bearing even date with the above written obligation, became and stands bounden jointly and severally with the said (*obligor*) unto treasurer of the honourable society of, &c. [or as the case was] in the penalty of £ , with a condition thereunder written, that if the said (*obligor*) should, during such time as he should be one of the company or members of the said society, pay and satisfy to the steward of the said house or society, all such sums of money as should be due for his commons, and for such duties and charges as by the orders, usage or custom of the said house or society should be due and payable by the said (*obligor*), and should observe and obey all the rules and orders of the said Honourable Society for the time being; and if he should not at any time during his continuance in the said house or society practise as a common attorney or solicitor in any of his Majesty's courts of justice wheresoever, then the said bond to be void or to that effect, as thereby relation being thereunto had will more fully appear. NOW THE CONDITION of the above written obli- CONDITION. gation is such, that if the said (*obligor*) do and shall in all things well and truly observe and perform the term and condition of the said in part recited bond or obligation, and also well and sufficiently save, keep harmless and indemnified him the said (*obligee*), his heirs, executors and administrators, and his and their lands and tenements, and goods and chattels, of, from and against the said in part recited obligation, and all and every sum and sums of money, cause and causes of actions and suits, and costs, charges, damages and expenses whatsoever, for or by reason thereof, or by reason or cause of his the said (*obligee*) being party or surety therein or thereto, or otherwise howsoever in relation thereto. THEN, &c.

(1) See *ante*, p. 129, notes.

(2) See *ante*, p. 77, and p. 73, notes.

BONDS.

Indemnity
(trustee).

No. CCXVIII.

**A Bond to Indemnify Trustees or Executors on permitting a person to retain money directed to be otherwise disposed of.*

KNOW ALL MEN, &c. (1). WHEREAS, by indenture bearing date, on or about the day of , &c. [*if a portion, provided by settlement ; but if by will*] WHEREAS (testator) late of, &c. by his last will and testament in writing, bearing date, &c. gave and bequeathed unto the said (*obligee and co-trustee or executor*), their executors and administrators, the sum of £ sterling, IN TRUST to place the same out upon Government or real securities, and to pay and apply the interests and proceeds thereof for and towards the maintenance and education of all and every the children of him the said (*testator, &c.*) who should be living at the time of his decease, until they should attain their respective ages of twenty-one years, and then in trust to pay the same unto the said children in the shares and proportions and manner therein mentioned, and [*if by will*] appointed the said (*obligees*) executors of his said will. AND whereas the said testator departed this life on or about the day of without revoking or altering his said will, leaving children, namely and him surviving, all of whom are still under the age of twenty-one years [*or as the case may be*]; AND whereas the said (*executors*), soon after the decease of the testator, duly proved the same in the Prerogative Court of the Archbishop of Canterbury. AND whereas the said (*obligor*) hath requested the said (*obligee*) to permit him to reserve and retain in his hands the said sum of £ so bequeathed to or vested in them, in trust as aforesaid, until the said children shall severally become entitled to

receive their respective proportions of the same, which the said (*obligee*) hath consented to do, on the said (*obligor*) and (*surety*) entering into the above written obligation, with such condition of defeazance as hereunder is written. Now THE CONDITION (1) of the above written obligation is such, that if the above bound (*obligor*), his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said and

BONDS.

Indemnity
(trustee).

CONDITION.

, children of the said (*testator*) as aforesaid, or to the survivors or survivor of them, their or his executors, administrators or assigns, their respective shares or proportions of the said legacy [or sum of £] so given to [or vested in] the said (*executors or trustees*) in trust for them in or by the said in part recited indenture [or will], together with all accumulations of any of the dividends, interest and proceeds thereof, at the ages and times, and in the manner and proportions, and according to the directions and true intent and meaning in all things of the said will [or indenture], and do and shall from time to time, and at all times hereafter, well and sufficiently save harmless and keep indemnified the said (*obligee*), his heirs, executors and administrators, and his and their goods and chattels, lands and tenements, from and against the same, and all loss, costs, charges, damages and expenses whatsoever which he or they shall or may pay, sustain or be put unto, by reason or on account of the said legacy [or sum] or of any part thereof, not being placed out upon Government or real security agreeably to the directions of the said recited indenture [or will] concerning the same, or for or by reason of any other default, matter, cause or thing whatsoever, by or on the part of the said (*obligee*) relating thereto. THEN, &c.

(1) See also condition, *post.* p. 163.

BONDS.

Marry.

No. CCXIX.

** A Bond given to marry a woman within a given time, or in default to pay a sum of money.*

KNOW ALL MEN, &c. (1) WHEREAS, &c. [*recite the facts leading to the bond being given*]. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*) shall and do on or before the day of , espouse and marry according to the rites and ceremonies of the church of England (*the lady*), daughter of the said (*obligee*) [*or as the case may be*], they the said (*obligor and lady*) being then living, and she the said (*lady*) assenting thereunto, and the laws of this realm permitting the same, or in case the said (*obligor*) shall make default therein, then if he the said (*obligor*) do and shall well and truly pay or cause to be paid unto the said (*lady*), her executors, administrators, or assigns, the sum of £ , of good and lawful money of the united kingdom of Great Britain and Ireland, on the next ensuing the said day of hereinbefore limited for the time of the solemnization of the said marriage. THEN, &c.

Obligation.

(1) See *ante*, pp. 77 and 73, notes.

BONDS.

Passport.

No. CCXX.

**Bond by a Master of a Vessel to deliver up a Pass received from the Admiralty, on his return from the voyage.*

KNOW ALL MEN, &c. (1) WHEREAS the above bounden (*obligor*) of, &c. hath received a pass, purporting to be a Mediterranean pass, signed by the right honourable the commissioners for executing the office of lord high admiral of Great Britain, &c. [*or as the case may be*] for the ship or vessel called the _____, and bound for or about to sail to _____ and back, whereof he the said (*obligor*) is actually master, bearing date the _____ day of _____ now last past. NOW THE CONDITION of the above written obligation is such, that if the said (*obligor*), or in case of his death or inability the person who shall succeed him as master of the said ship or vessel called the _____, shall deliver or cause to be delivered the said pass into the admiralty office upon her return from her said intended voyage into the port of London, or to the proper officers of the customs at any other port of the United Kingdom of Great Britain and Ireland, where she shall arrive in order to her unloading; or in case the said (*obligor*) shall not return to any part of the said united kingdom within the term of _____ years (2) from the date hereof,

CONDITION.

(1) See *ante*, pp. 77, and 73 notes.

(2) There is a variation as to the time for delivering up passes in different trades. Passes for ships trading to the ports of France, Portugal and Spain on this side the Mouth of the Streights, being to be delivered up within *twelve months*, either to the admiralty or the custom-house officer at the port of unloading in Great Britain or Ireland; for ships in either of the Plantations within a like period to the governor of such Plantation; for ships in the East India trade, at the return from the voyage, without any limitation of time; and passes for ships belonging to Gibraltar differ from all others, not only in the wording, which is for delivering them up to such commissioners within twelve calendar months, or at the end of the voyage if the ship return sooner, but as being granted by the commissioners for executing the office of lord high admiral at that place.

Obligation.

BONDS.Passport.

and during the said term or time shall remain and be the property of his Majesty's subjects or any of them; then if the master for the time being of the said ship or vessel shall and do at the expiration of the said term of years, deliver or cause to be delivered the said pass unto the governor or commander in chief of one of his Majesty's foreign governments or Plantations, or unto one of his Majesty's consuls, to be returned and transmitted to the commissioners for executing the office of lord high admiral of the said united kingdom. AND also if the said master for the time being do and shall when and as often as the said ship or vessel shall go into any foreign port or place within the reach or district of any of his Majesty's consuls deliver or cause to be delivered the said pass unto such consul or respective consuls, or his or their deputy or deputies, upon his or their demanding the same in writing, in order to the said pass being retained in the possession of such consul or consuls respectively, or his or their deputy or deputies, until the said (*obligor*) shall have received the usual clearances, and be ready to depart from such port or place at or from which the said pass is to be returned for the use of the said ship or vessel, or in case the said ship or vessel shall happen to be taken by an enemy or by pirates, or to be cast away and shipwrecked, by means whereof the said pass shall be inevitably lost or destroyed, then the above obligation shall be void and of none effect (1). [But if the said master for the time being shall neglect to deliver or cause to be delivered the said pass into the admiralty upon her return from her present intended voyage into the port of London, or to the proper officers of the customs at any other port of the united kingdom of Great Britain and Ireland where she shall arrive within the said term of years in order to her unloading, or in case the said ship shall not return to any port of the said united kingdom within the said term, then unto the governor or commander-in-chief of one of his Majesty's foreign governments or plantations, or unto one of his Majesty's consuls in the Mediterranean or elsewhere, before the expiration of that term, or if the said master for the time being shall neglect or refuse to deliver the said pass to any of his Majesty's consuls or their deputies abroad, upon demand in writing being made thereof in the manner above mentioned (to prove which demand and refusal or neglect a certificate thereof in writing under

(1) The condition might, it should seem, end here, concluding with "or else," &c. in the ordinary form; but it is usual to go through the condition again in the negative.

the hand of the respective consuls or his deputy is to be deemed a sufficient evidence), or if the said pass shall be sold, lent or otherwise disposed of to any person whatsoever, so as that the same shall not be actually and constantly made use of for the service of the said ship or vessel called the _____, for which it is granted, so long as the master thereof for the time being shall be a British subject.]
THEN, &c.

BONDS.Passport.

BONDS.

Pay
(advances).

No. CCXXI.

**Bond from a Merchant or other person for re-payment of sums which may be advanced to himself or a third person by virtue of a Letter of Credit.*

- Recital. KNOW ALL MEN, &c. (1). WHEREAS the above bound (*obligor*) [*or his son, or as the case may be*] is going abroad, and hath requested the above named (*obligee*) to supply and pay unto him or his order, at or elsewhere, such sums of money which he may from time to time have occasion for, not exceeding the sum of £ upon the security of the above written obligation, which he has agreed to do, and hath accordingly given unto the said (*obligor*) or (*son, &c.*) an order or letter of credit upon and directed to and Co. at aforesaid, bearing even date herewith, to furnish unto him the said (*obligor*) or (*son, &c.*) all such sum or sums of money as he may from time to time require at or elsewhere, not exceeding the said sum of £.
- CONDITION. NOW THE CONDITION of the above written obligation is such, that if the said (*obligor*), his heirs, executors or administrators, do and shall, within the space or period of after the time of any such sum of money being advanced to him [*or the said (son)*] or after the payment of any bill or bills of exchange which shall or may be drawn by him the said (*obligor, or, &c.*) well and truly re-pay or cause to be re-paid unto the said (*obligee*), his executors or administrators, or his agent or agents at so much sterling money as shall be so advanced or paid to him the said (*obligee, or, &c.*) upon or by virtue of the said order or letter of credit, or otherwise, not exceeding in the whole the sum of £ sterling. THEN, &c.

Obligation.

(1) See *ante*, pp. 77, and 73 notes.

 FORM.

 Pay
 (allowance).

No. CCXXII.

**Bond to a Trustee for Payment of a Yearly or Weekly Allowance to a Wife for her support on separation. (1)*

KNOW ALL MEN, &c. (2) WHEREAS in or about the year a marriage was had and solemnized by and between the above bounden (*obligor*) and (*wife*); AND whereas the said (*wife*) has one child by the said (*obligor*) now living, of the age of or thereabouts, and baptized by the name of . AND WHEREAS various differences having from time to time arisen between the said (*husband*) and his said wife, they have mutually agreed to live separately and apart from each other, and the said (*husband*) hath agreed to allow to his said wife the yearly [*or weekly*] sum of for the support of herself, and the maintenance and education of the said child during his [*or her*] minority, and to enter into the above obligation for further securing the payment thereof. NOW THE CONDITION. CONDITION. OF the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors or administrators, do and shall well and truly pay or cause to be paid so long as they the said (*husband*) and (*wife*) shall live apart and separate from each other, the full and just sum of of good and lawful money of the United Kingdom of Great Britain and Ireland unto the said (*trustee*), his executors or administrators, or unto her the said (*wife*), to and for the sole and proper use and benefit of her the said (*wife*) and the support of the said (*child*), by equal quarterly payments, on the day of , &c. [*or on in every week*] between the hours of ten and twelve of the clock in the day-time, at or in the common dining-hall of Lin-

(1) See *ante*, MOD. PREC. Vol. VII. (3d. Ed.) p. 663, *et seq.* notes—also *post.* p. 145, notes.

(2) See form of obligation, *ante*, pp. 77. and 79, notes; also *post.* Obligation. p. 145, notes.

bonna.
Pay
(allowance).

coln's Inn, in the county of Middlesex (or elsewhere, if demanded) in every year, until the said (*child*) shall have attained the full age of twenty-one years, or [*if a female*] be married, or depart this life under that age (whichever event may soonest happen), and a proportionate part of the said yearly [*or weekly*] sum from the last day for payment thereof up to and including the day of the decease, or attainment of the age of twenty-one years [*or marriage*] of the said (*child*); And also do and shall, from and after the said (*child*) shall attain his [*or her*] said age of twenty-one years, [*or be married*] or depart this life under the said age of twenty-one years, if the said (*wife*) shall be then living, well and truly pay or cause to be paid unto him the said (*trustee*), or her the said (*wife*) or her assigns, the sum of yearly and every year [*or weekly and in every week*] at and upon the days and times, and in the manner aforesaid, of like lawful and current money, during the natural life of her the said (*wife*) for her and their own use and benefit; and do and shall make or cause to be made every of the said payments free from and clear of all deductions and abatements whatsoever, for or by reason of any cause, matter or thing whatsoever; or in case the said (*husband*) and (*wife*) shall hereafter again live and cohabit together (1) as man and wife. THEN, &c.

(1) See also *post.* p. 147. n. (3).

* * * See *post.* p. 148.

BONDS.

 Pay
 (annuity).

No. CCXXIII.

A Bond for securing the Payment of an Annuity to a Grantee during the life of the Grantor.

Variations where it is for the life of the Grantee or Nominees or several persons. Also where a Surety joins.

KNOW ALL MEN, &c. (1) WHEREAS (2) the above named (*grantee*) hath contracted with the above bounden (*grantor*) for the purchase of an annuity or yearly sum of £ to be paid to the said (*grantee*), his executors, administrators or assigns, during the term

(1) See form of obligation, *ante*, pp. 73. 77.

No execution can issue for the penalty of an annuity bond, but only *toties quoties* for the accruing payments; *Toulmin v. Price*, 5 Ves. 236. to the extent of the penalty, *Mackworth v. Thomas*, *ib.* 329. The penalty should therefore be sufficient to cover arrears and costs.

Obligation.

(2) If the bond be conditioned for the payment of an annuity to a wife on a separation, say,

Annuity to wife
on separation.

“WHEREAS the above bounden (*husband*) and his wife having, on account of various unhappy differences between them, mutually agreed to live separate and apart from each other during their lives, the said (*husband*) hath, by an indenture bearing or intended to bear even date with the above written obligation, and made or expressed to be made between the said (*husband*) of the first part, the said (*wife*) of the second part, and (*the wife's trustee*) of the third part, charged certain freehold lands and hereditaments in the said indenture described, with the payment of an annuity or yearly sum of £ to the said (*wife*) for the term of her natural life, and hath agreed to further secure the same by entering into the above written obligation, with such condition for making void the same as hereinafter is expressed. Now THE CONDITION,” &c. *as above*.

BOND.
Pay
(annuity).

of the natural life of the said (*grantor*) (1), but subject to such agreement for re-purchasing the same as hereinafter is mentioned or referred to, at the price or sum of £ , which the said (*grantee*) hath paid to the said (*grantor*) at the time of the sealing and delivery of the above written obligation, in promissory notes (2) of the Governor and Company of the Bank of England, payable to the bearer thereof respectively on demand: AND WHEREAS (3) on the contract for the said purchase it was agreed, that for the better securing the payment of the said annuity, the said (*grantor*) (4) should execute a certain indenture of grant and covenant relating thereto, which said indenture has been already prepared and engrossed, and bears or is intended to bear even date with the above written obligation, and is made or expressed to be made between the said (*grantor*) of the one part, and the said (*grantee*) of the other part, and that the same annuity or annual sum should be still further secured by the above written obligation, and also a warrant of attorney to confess judgment thereon. NOW THE CONDITION of the above written is such, that if the above bounden (*grantor*) (5) do and shall well and truly pay, or cause to be paid unto the said (*grantee*), his executors, administrators or assigns, one annuity or clear yearly sum of £ of good and lawful money of the

CONDITION.

Nominees.

(1) If the annuity be granted during the lives of nominees, say,
“ During the natural lives of (*the nominees*) of, &c. and the life of the survivor of them.”

Consideration money.

(2) Under the former act of 17 Geo. 3. c. 6. it was necessary that the consideration for the purchase of the annuity, with the mode of payment, &c. should be set forth, as well in the bond as in every other security by which it might be accompanied; see *Hodges v. Money*, 4 Durnf. and E. 500. But by the late act of 53 Geo. 3. c. 141. the pecuniary condition is required to be stated in the memorial only.

(3) If a surety join with the grantor in securing the annuity, add,

“ AND WHEREAS the said (*surety*) hath agreed to become a surety for the said (*grantor*), and to join in the grant and other securities for the payment of the said annuity.”

Surety.

(4) If there be a surety, add,

“ And the said (*surety*).”

Surety.

(5) If a surety join with the grantor, say,

“ The above bounden (*grantor*) and (*surety*), or either of them, or the heirs, executors or administrators of either of them.”

If the annuity be granted during the life of the grantee or nominees, add,

“ His heirs, executors or administrators.”

BONDS.

Pay
(annuity).

United Kingdom of Great Britain and Ireland, of English value and currency, yearly and every year during the natural life of him the said (*grantor*) (1), unless the same shall be sooner re-purchased or otherwise extinguished, in the manner in the said in part recited indenture, and hereinafter also expressed, by four equal quarterly payments, on the day of , the day of , the day of , and the day of in each year, without any deduction or abatement for or on account of any tax, rate, assessment or other matter, cause or thing whatsoever, at or in the common dining-hall of the Inner Temple, London, between the hours of twelve and two of the clock in the day-time. AND if the heirs, executors or administrators of him the said (*grantor*) do and shall in like manner pay a due and just proportion of the said annuity or quarterly payment up to the day of the death of the said (*grantor*), in case of his decease between either of the said days or times (2); and if he or they do and shall make the first of the said payments on the day of next ensuing the date of the above written obligation, in case the said (*grantor*) shall so long live, and if not, then on the day of his decease (the said sums and days and times being, or being intended to be the same respectively as are mentioned in the above in part recited indenture (3). Or if the said (*grantor*) (4), his heirs, executors or administrators, do and shall at any time after the expiration of years from the date hereof, well and truly pay, or cause to be paid unto the said (*grantee*), his executors, administrators or assigns, the full and just

(1) If the annuity be granted during the lives of nominees, say,
“During the term of the natural lives of the said (*nominees*), and the life of the survivor or longest liver of them.”

Nominees.

(2) This is necessary, an annuity not being apportionable, unless by express agreement; see 3 Atk. 261; 2 Ves. 682; 3 Brow. Ch. R. 99. 101.

(3) If the bond be conditioned for payment of an annuity to a wife on a separation, omit the clause of re-purchase, and add,

Annuity to wife
on separation.

“Or if the said (*husband*) and (*wife*) shall at any time hereafter mutually and voluntarily consent and agree, in or by any writing under both their hands, subscribed and attested by two or more credible witnesses, to live and cohabit together, and shall accordingly live and cohabit together as man and wife for the space of one calendar month next thereafter.” THEN, &c. or else, &c.

(4) If a surety join, say,

Surety.

“The said (*grantor*) and (*surety*), or either of them, or the heirs, executors or administrators of either of them, or any person or persons on their or either of their behalf.”

<u>BONDS.</u> <u>Pay</u> <u>(annuity).</u>	just sum of £ of lawful and current money aforesaid, (calendar months notice of such payment having been previously given, or the sum of £ being one quarter's payment of the said annuity, being paid in lieu of such notice), as and for the re- purchase and extinguishment of the said annuity or yearly sum of £ , together with all arrears which shall be then due upon or on account of the same annuity, and all costs, charges and expenses which may have been incurred by reason of any default in payment thereof. THEN, &c.
--	---

Enrolment.

p. 618. *infra*

Stamp.

. By 53 Geo. 3. c. 141. a memorial of every bond or other security for payment of an annuity during any life or lives, or years determinable thereupon, must be enrolled in Chancery within thirty days; see *ante*, MOD. PREC. Vol. VI. (3d Ed.) p. 72. n. *.*.

If the bond be given as a collateral or auxiliary security for the payment of the annuity, it will require a stamp of £1 only, if the deed of grant be impressed with an *ad-valorem* stamp; but if from any circumstance, as the consideration of the annuity being the conveyance of an estate or the like, the *ad-valorem* duty do not attach upon the deed of grant, the bond must then be impressed with the *ad-valorem* stamp.

BONDS.

Pay
(balance to
bankers).

No. CCXXIV.

Bond given by a Customer to Bankers for securing the repayment of money they may advance beyond the balance in their hands.

(Concise Form (1).)

Variations where a Surety joins (2). Also where the bond accompanies a mortgage.

KNOW ALL MEN, &c. (3) WHEREAS the said (*obligor*) hath opened an account with the said (*obligees*) as bankers, at their banking-house at . . . AND WHEREAS the said (*obligees*) have agreed to discount bills of exchange and other negotiable securities, and otherwise pay in advance for the said (*obligor*) if he should have occasion,

(1) See fuller form, *post.* p. 152.

(2) A bond entered into by a surety jointly with his principal, conditioned to repay to several persons as copartners all sums advanced by them or any of them to the principal in their capacity as bankers, will not (as to the surety) extend to sums advanced by the surviving partners after the decease of either of them; *Arlington v. Merricke*, 2 Saund. 411, c.; *Barker v. Parker*, 1 Durnf. and E. 287; *Weston et al. v. Barton*, 4 Taunt. 673; *Wright v. Russel*, 2 Blac. 934. 3 Wils. 532. S. C.; *Myers v. Edge*, 7 Durnf. and E. 254; *Strange v. Lee*, 3 East, 484; *Bodenham v. Purchas*, 2 Bar. and Ald. 39; *Clayton's case*, 1 Mer 592; because in favour of a surety the bond is construed strictly, and according to the letter; but the principal will be bound notwithstanding any change in the obligees. And it should seem, that it will be the same as to the surety, if the bond be so worded as to extend to each of the obligees in his distinct or several capacity, or to the house or firm for the time being, and be not confined to the firm of the house subsisting at the date of the bond, or to the obligees in their joint capacity. See *Barclay v. Lucas*, as cited in 2 Saund. 415. n.; 1 Durnf. and E. 291. n. (a). In the first case above cited of *Arlington v. Merricke*, however, the court appears to disapprove of this latter case generally, without adverting to this distinction; and see 5 Bar. and Ald. 264. n.

Surety not liable
after change of
firm.

(3) See form of obligation, *ante*, pp. 73. 77; and see notes, p. 33.

And so a bond given by copartners to secure payment of balances due from them to their bankers will not (unless specially worded for the purpose) cover any advances made by the bankers to one of the parties after the death of the other of the obligors; *Simpson v. Cooke*, 1 Bingh. (C. P.) 452.

Obligation.
Partners obligors.

BONDS.

Pay
(balance to
bankers).

CONDITION.

any sum or sums of money not exceeding at any one or more time or times the sum of £ in the whole (1), upon his entering into the above written obligation with such condition to be thereunder written as hereinafter is contained. Now THE CONDITION of the above obligation is such, that if the said (*obligor*), his heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, re-imburse and fully pay and satisfy to the said (*obligees*), and all and every other person and persons who shall or may become partner or partners with them in the banking business, or any or either of them, or other the firm of the said house for the time being, and their and each and every of their heirs, executors, and administrators, all and every such sum and sums of money as they the said (*obligees*) or any or either of them, or any future partner or partners of the said firm, or other the firm of the house for the time being, shall advance and pay, or be liable to advance and pay, for or on account of their or his accepting or paying any bill or bills of exchange, drafts, notes, or other securities or engagements whatsoever, which he the said (*obligor*) shall or may from time to time or at any time or times draw upon, or desire, or request to be paid by them or any or either of them, or the firm of the said house for the time being, or be made payable at their banking-house, or which shall be discounted or paid, or credited in advance by them or either of them for the said (*obligor*); and also all and every other sum and sums of money which they the said (*obligees*) or any or either of them, or other the firm of the house for the time being, shall have laid out, paid, or advanced, or become in any wise liable to advance or pay to any person or persons whomsoever, to, for, or on the credit of the said (*obligor*) or otherwise on his account; together with such lawful charges and allowances for advancing and paying such bill or bills, drafts, notes, securities, and engagements as are usually charged by bankers in such and the like cases, and interest after the rate of five per cent. per annum for such sums as

Mortgage.

(1) If the bond accompany a mortgage made to the bankers for the like purpose, add,

“ And by indentures of lease and release, &c. [*or as the case may be,*] bearing date, &c. and made between, &c. the said (*obligor*) hath for the security and indemnity of the said (*obligees*) executed a conveyance, by way of mortgage, of certain hereditaments, situated, &c. AND as a further security for the said purpose has agreed to enter into,” &c. *as above.*

they shall be in advance or in balance against the said (*obligor*). AND also do and shall from time to time, and at all times hereafter, well and truly indemnify and save harmless the said (*obligees*), their executors, administrators, and assigns, and all and every other person or persons who shall or may become partner or partners with them or any of them, and their and each and every of their heirs, executors and administrators, and their and each of their goods and chattels, and lands, tenements, and hereditaments of, from, and against all manner of actions, suits, losses, costs, charges, damages, expenses, and demands whatsoever, which shall or may happen, or be occasioned by, or by reason, or on account of their or any or either of their accepting, paying, or satisfying all or any such bill or bills of exchange, drafts, notes, securities, or engagements, or of their, or any, or either of their lending, paying, or advancing, or becoming in any manner liable to lend, pay or advance any sum or sums of money to, for, or in credit of the said (*obligor*) or otherwise on his account, or for his use and benefit (1). THEN, &c. or else, &c.

MONED.

Pay
(balance to
bankers).

(1) If the bond is to accompany a mortgage, there may be added, Mortgage.

"According to the true intent and meaning, and in performance, satisfaction and discharge of the proviso or condition contained or expressed in the said in part recited indenture of release. AND moreover in case the said (*obligor*) shall die, if his heirs, executors, and administrators, do and shall well and truly observe, perform, and fulfil all and every the covenants, declarations and agreements in the said indenture contained, and which are by him or them to be observed, performed and fulfilled. THEN," &c.

BONDS.

Pay
(balance to
bankers).

No. CCXXV.

**Bond by a Customer and Surety to secure a present Debt and floating Balance to Bankers (1).*

Recital.

KNOW ALL MEN, &c. (2). WHEREAS the said (*obligees*) are bankers. AND WHEREAS the said (*obligor*), at the time of the date and execution of the above written bond or obligation, stands indebted to the said (*obligees*) in the sum of £ , for monies actually advanced, lent, and paid by the said (*obligees*) and by their late partner, as bankers, to and for the use and on the account of the said (*obligor*), and for interest on the monies advanced, as he the said (*obligor*) doth hereby acknowledge and declare, and which debt or sum of £ has been transferred to the credit of the said (*obligees*) as hereinafter mentioned, and for part of which said sum of £ the said (*obligees*) have sundry bills, promissory notes and drafts. AND WHEREAS the said lately retired from the said banking concern, and is no longer a partner therein, and the said (*new partner*) has been admitted a partner therein with the said (*obligees*) in the place and stead of the said , and thereupon the said debt or sum of £ was, before the date and execution of the said above written bond or obligation, by and with the concurrence and privity of the said , and with the consent of the said (*obligor*), transferred from the said (*obligees*) (*the old firm*) to the credit of the said (*obligees*) (*the new firm*), in the books of their said respective partnerships, so that the said debt or sum of £ is now due and owing from the said (*obligor*) to the said (*obligees*), as he the said (*obligor*) doth hereby admit and declare. AND WHEREAS the said (*surety*) hath agreed to become the surety

(1) As to bonds of this nature, see *ante*, p. 149. n. (1). and p. 73. in notes.

Obligation.

(2) See *ante*, pp. 73. 77.

of the said (*obligor*) for the payment of the sum of £ , and of all other sums which the said (*obligees*), or any of them, or their or any of their partners for the time being, shall or may at any time hereafter lend, advance, or pay to or for the use or on the account of the said (*obligor*) or any of his partners or partner for the time being, or for which he or they shall be responsible to the said (*obligees*) for the time being, to the extent and in manner hereinafter mentioned. AND WHEREAS it hath been agreed, that the said (*obligor and surety*) shall enter into the above written bond or obligation, subject to the condition hereafter expressed, for securing to the said (*obligees*) all such monies as aforesaid, with costs, if any, to the extent of, but not exceeding the sum of £

in the whole. Now THE CONDITION of the above written obligation is such, that if the said (*obligors*) or either of them, or their or either of their heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, on demand made by the said (*obligees*), or any or either of them, or their or any or either of their partners or partner for the time being, as bankers, by any change or alteration of the persons composing the said banking concern for the time being, or the survivors or survivor of them, or the executor or administrator of such survivor, or their or his partners or partner for the time being, well and truly pay or cause to be paid to the said (*obligees*), and the partners and partner for the time being of any or either of them as bankers, by any change or alteration of the persons composing the said banking concern for the time being, or the survivors or survivor of them, or the executor or administrator of such survivor, or their or his partners or partner for the time being, the said sum of £ , and also all and every

sum and sums of money whatsoever which from time to time shall be due and owing to them, any or either of them, from or by the said (*obligor*), his heirs, executors, or administrators, or his or their partners or partner for the time being, on the balance of accounts between the said (*obligor*), his executors or administrators, or his or their partners or partner for the time being, on the one part, and the said (*obligees*), or any or either of them, and their or any or either of their partners or partner for the time being, as bankers, by any change or alteration of the persons composing the said banking concern for the time being, or the survivors or survivor of them, and their or his partners or partner for the time being, on the other part, for and in respect of the said sum of £ , and all and every other sum and sums of money hereinafter to be lent, advanced, and paid by the said (*obligees*), or any or either of them, or their or any

BONDS.

Pay (balance of bankers.)

CONDITION,
obligors to pay
balances,

BONDS.
Pay (balance to
bankers).

and exonerate
 from liabilities,

and allow lawful
 charges, &c.

and interest;

or either of their partners or partner for the time being, as bankers, by any change or alteration of the persons composing the said banking concern for the time being, or the survivors or survivor of them, or the executor or administrator of such survivor, or their or his partners or partner for the time being, or for which he or they, or his or their partners or partner for the time being, or any of them, shall or may be answerable or responsible, either as drawers or acceptors or indorsers of any foreign or inland bill or bills of exchange, or as drawers or indorsers of any promissory note or notes of hand, or otherwise howsoever, to them the said (*obligees*), or any or either of them, or any or either of their partners or partner for the time being as bankers, by any change or alteration of the persons composing the said banking concern for the time being, or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his partners or partner for the time being; and also for the usual and lawful charges of the said (*obligees*), or any or either of them, or any or either of their partners or partner for the time being as aforesaid, or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his partners or partner for the time being, as bankers or banker for the said (*obligor*), his executors or administrators, or his or their partners or partner for the time being, for discount, postages, and commission, and all other lawful charges and expenses on all foreign or inland bills of exchange and promissory notes to be negotiated, taken, received, or discounted for, from, or on the account of the said (*obligor*), his executors or administrators, or his or their partners or partner for the time being, by the said (*obligees*), or any or either of them, or their or any or either of their partners or partner for the time being as aforesaid, or the survivor or survivors of them, or the executors or administrators of such survivor, or his or their partners or partner for the time being as aforesaid; and also of, upon, and for all other businesses to be transacted for the said (*obligor*), his executors or administrators, or his or their partners or partner for the time being, by the said (*obligees*), or any or either of them, or their or any or either of their partners or partner for the time being as aforesaid, or the survivors or survivor of them, or the executor or administrator of such survivors or survivor of them, or their or his partners or partner for the time being, in their said business as bankers, together with interest at the rate of £5 per cent. per annum for the said sum of £ , and also for all such other sum or sums of money as from time to time, and for the time being, shall be due or owing from the said (*obligor*), his executors or administrators, or his or their partners or

partner for the time being as aforesaid, to the said (*obligees*), or any or either of them, and their or any or either of their partners or partner for the time being as aforesaid, or the survivors or survivor of them, or the executor or administrator of such survivor, and their or his partners or partner for the time being, on the balance of such account, whether open or stated between them, such interest to be computed and calculated according to the usual mode and custom of bankers in the said city of _____, on the balance of monies which from time to time shall arise and be due to or in favour of the said (*obligees*), or any or either of them, or their or any or either of their partners for the time being as aforesaid, or the survivors or survivor of them, or the executor or administrator of such survivor, and their or his partners or partner for the time being, as the same balances shall be increased or diminished or reduced from time to time; so nevertheless that all monies intended to be secured by the above written bond or obligation shall not exceed the sum of £ _____ of lawful English money in the whole. AND also if the said (*obligor*), his executors or administrators, and his or their partners or partner for the time being, do and shall from time to time, and at all times hereafter, on demand made by the said (*obligees*), or any or either of them, or their or any or either of their partners or partner for the time being as aforesaid, or the survivors or survivor of them, or the executor or administrator of such survivor, or their or his partners or partner for the time being, join and concur with the said (*obligees*), and any or either of them, and their or any or either of their partners or partner for the time being as aforesaid, or the survivors or survivor of them, or the executors or administrators of such survivor, and their or his partners or partner for the time being, in settling, adjusting, and ascertaining the balance of every such account, and the amount of the sums or sum of money then due or owing by, from, or to the said (*obligees*), or any or either of them, or their or any or either of their partners or partner for the time being as aforesaid, or the survivors or survivor of them, or the executor or administrator of such survivor, and their or his partners or partner for the time being, upon every such account. THEN, &c.

BONDS.

Pay (balance to
bankers).and assist in
making up ba-
lances.

BONDS.Pay (balance
to agent).

No. CCXXVI.

**Bond from a Country Solicitor to his Agent in London for the re-payment of balances on account of monies which may be advanced (1).*

Obligation.
Recital.

KNOW ALL MEN, &c. (2). WHEREAS the above named (*obligor*) practises as an attorney and solicitor at aforesaid, and the said (*obligee*) hath agreed to act as his agent in London to transact such parts of the professional business of the said (*obligor*) as are to be done in the offices or courts in London, upon his executing the above obligation to secure the repayment of such sums as the said (*obligee*) may advance or pay for the said (*obligor*) on ac-

CONDITION.

count of the said business. Now THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors or administrators, or partner or partners for the time being, do and shall from time to time and at all times, yearly and every year, so long as he the said (*obligee*) his partner or partners for the time being, shall be or act as the London agent or agents of the said (*obligor*) or his partner or partners, well and truly pay, or cause to be paid unto the said (*obligee*), his executors, administrators, partner, partners or assigns, on or before the day of in every year, all such balance and sum or sums of money as shall or may at or upon the settlement of accounts between them, on or up to the day of then next preceding, appear to be justly owing to the said (*obligee*), his executors, administrators, partner or partners, as such agent or agents aforesaid, or otherwise howsoever, from him the said (*obligor*), his executors, administrators, partner or partners, clients or assigns, after allowing and abating all and every such sum and sums as he the said (*obligee*), his, &c. shall have received for or on account of him, them, or any of them. THEN, &c.

(1) This bond, *mutatis mutandis*, is equally applicable to the purpose of securing balances due from the London agent to his country solicitor.

Obligation.

(2) Form of obligation as *ante*, p. 77.

BONDS.

 Pay
 (bills of ex-
 change).

No. CCXXVII.

**Bond from a Merchant to Pay Bills of Exchange to be drawn upon him by his Factor abroad.*

KNOW ALL MEN, &c. (1). WHEREAS [*recite shortly the facts leading to the bond being given*]. NOW THE CONDITION of the CONDITION. above written obligation is such, that if the above bounden (*obligor*), his heirs, executors or administrators, shall and do accept all and every bill or bills of exchange which are, is or shall be drawn by (*factor*) residing at in on the said (*obligor*), for such goods, wares or merchandizes as shall or may be shipped and laden by the order of the said (*obligor*) on board the ship , whereof is master, or any other ship or vessel, or ships or vessels, as and when the said bill or bills of exchange shall be tendered or presented to or for the acceptance of the said (*obligor*), his executors or administrators; not exceeding the amount of £ sterling in the whole; and also if the said (*obligor*), his heirs, executors or administrators, shall and do well and duly pay or cause to be paid all and every the full amount or value of or mentioned in all and every such bill or bills of exchange which shall be so drawn and presented, at such days and times, and in such manner as the same and every of them respectively shall become due and payable, according to the tenor and purpose of every or any such bill or bills of exchange respectively, and the custom of merchants in relation thereto. THEN, &c.

(1) See *ante*, p. 77, and p. 73, notes.

Obligation.

BONDS.

Pay
(composition).

No. CCXXXVIII.

**Bond from a Debtor to Pay Composition agreed to be accepted by his Creditors (1).*

Recital of agree-
ment of com-
position.

KNOW ALL MEN, &c. (2). WHEREAS in or by a certain indenture bearing date on or about the day of the (*obligee*), amongst other creditors of the above bounden (*obligor*), agreed to accept the sum of shillings in the pound as a composition in full for a certain debt or sum of £ owing to him by the said (*obligor*), to be paid at the times following, (that is to say) shillings in the pound part thereof on the day of , and shillings in the pound other part thereof, on, &c. and in which said indenture there is contained a proviso, that if the said (*obligor*) should fail in either of the said payments, then the said indenture should be void and of no effect, and the creditors parties thereto should respectively be at liberty to sue for and recover the whole amount of their respective debts; and the said (*obligor*) thereby agreed to execute a bond for the due payment of the said composition when required by any of his said creditors, in penalties of double the amount of the original debt, with a condition to be thereunder written, that if any default should be made in either of the said payments at the times aforesaid, the said penalties should be forfeited, and be a security for the payment of the whole amount of their respective debts, in like manner as if no composition had been entered into, as by the said in part recited indenture, reference being thereunto had, will more fully appear. AND WHEREAS there was due and owing to the said (*obligee*), at the time of his signing the said indenture, the sum of £ , and he has required the above written obligation for securing the said composition so payable to him as aforesaid.

CONDITION. NOW THE CONDITION of the above written obligation is such (3), that

Obligation.

- (1) See *ante*, MOD. PREC. Vol. VI. p. 376. (3d Edit.) in notes.
(2) See *ante*, p. 77, and 73, notes.
(3) See *post*. No. CCXXXII. (p. 164.) and notes there.

if the said (*obligor*), his heirs, executors or administrators, do and shall well and truly pay, or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, the sum of £ on the day of , which will be in the year, &c. (1) [as before], making in the whole the sum of £ , (being the composition money so agreed to be accepted by him the said (*obligee*) for his said debt of £ after the rate of shillings in the pound as aforesaid). AND if the said (*obligor*), his heirs, executors or administrators, do and shall, at the respective times of paying the said several sums or instalments, well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, interest for the same at and after the rate of £5 per cent. per annum, from the date of the said in part recited indenture to the said respective times of payment: AND if the said (*obligor*), his heirs, executors or administrators, do and shall make the said several payments, and every of them, without any deduction, defalcation or abatement, and without fraud or delay; or in the case of any such default, fraud or delay, then if the said (*obligor*), his heirs, executors or administrators, do and shall well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, upon demand, the full sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, (being the whole of the said debt owing to him the said (*obligee*) by the said (*obligor*) as aforesaid), together with interest for the same, after the rate of £5 per cent. per annum, THEN, &c.

BONDS.
Pay
(composition).

(1) If bills of exchange or promissory notes are to be given for payment of the instalments, see and vary the condition as ante, No. CCXXVII. Bills.

BONDS.

Pay
(freight).

No, CCXXIX.

**Bond by Owners of a Ship, &c. to Pay Freight, &c. for Goods shipped (1). (Usual form).*

KNOW.

KNOW ALL MEN, &c. (2) WHEREAS the above bounden (*obligors*) are bound out on a voyage to and other parts beyond seas; AND WHEREAS the above named (*obligee*), at the request of the said (*obligors*), hath shipped, or is about to ship, on board some ship or ships for of , particularly mentioned in the invoice thereof, which goods, by agreement, are to be consigned to the said (*obligors*) at , and they have agreed and do hereby agree to receive the same, and pay the freight thereof to the said place, and to dispose of the said goods, and run all the risks of the same after their arrival there, and to answer, pay and make good to the said (*obligee*) at for the said goods, and his profits thereby, and for bearing the risk thereof, the sum of

CONDITION.

£ , as hereunder mentioned. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligors*), their executors or administrators, or either or any of them, shall and do receive the said goods upon their arrival at aforesaid, and pay the freight thereof to the said place, and run all risks of the same after their arrival there, and do and shall truly pay, or cause to be paid, satisfied and made good unto the said (*obligee*), his executors, administrators and assigns, for the said goods, and his profits thereby, and for his risk thereof to aforesaid, the sum of £ of, &c. on the day of (all further advantages by or in respect of the said goods being for the proper account and use of the said (*obligors*)). THEN, &c.

(1) See *post*. "CHARTER-PARTY."

(2) See *ante*, p. 73, and notes.

BOMBS.

Pay
(goods).

No. CCXXX.

**Bond from a Retail Trader (and surety) to a Manufacturer or Wholesale Dealer for Payment of Goods which may be supplied to order.*

KNOW ALL MEN, &c. (1) WHEREAS (*principal*) of, &c. hath Recital.
opened or is about to open a shop at aforesaid, as a
linen-draper [*or as the case may be*], and hath applied to the above
named (*obligee*) to supply him with such goods in the said trade as
he may from time to time have occasion for at the usual prices, which
the said (*obligee*) hath agreed to do upon the said (*principal*) and
the said (*surety*) entering into the above written obligation with
such condition as hereinafter is written. NOW THE CONDITION of CONDITION.
the above written obligation is such, that if the above bounden
(*principal*), his heirs, executors, or administrators, do and shall
from time to time, and at all times hereafter, well and truly pay or
cause to be paid unto the said (*obligee*), his executors, administra-
tors, or assigns, all and every such sum and sums of money, and bill
and bills of exchange as shall at any time or times hereafter become
due and owing to him the said (*obligee*) from the said (*principal*),
not exceeding in the whole, at any one time, the amount or sum of
£ , for goods, wares, or merchandize sent and delivered
to or to the order of the said (*principal*), at such time and times as
or for which the same goods, wares or merchandize and bills of ex-
change shall respectively become due and payable, according to the
usage and custom of the said trade or business of ; or if the
said (*surety*), his executors or administrators, do and shall, within
the space of calendar months next after notice in writing,
under the hand of the said (*obligee*), his executors, administrators,
or assigns, shall have been given, of any such default, as hereinafter
mentioned, and of the amount thereof; (such notice being, in every

NOTE.Pay
(goods).

case, given within days next after any such default (1),) well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators, or assigns, all and every such sum and sums of money as at the time of such notice shall be due and owing from him the said (*principal*), his executors or administrators, not exceeding the said sum of £ , or in case the same shall exceed that sum, then such sum of £ , in part of the sum so due and owing; or if the said (*obligee*), his executors, administrators, or assigns, shall fail to give such notice of default as aforesaid, by leaving the same at the then or last usual or supposed place of abode, or the counting-house of the said (*obligee*), his executors, administrators, or otherwise. THEN, &c.

(1) See *ante*, p. 79. n. (1), p. 129, notes.

BONDS.

Pay
(legacy).

No. CCXXXI.

**Bond from a Purchaser for Payment of Legacies or Portions chargeable on the Estate when Minors become of age.*

KNOW ALL MEN, &c. (1) WHEREAS, &c. [*recite shortly the will or settlement by which the legacies or portions are made chargeable on the estate*]. AND WHEREAS, &c. [*recite the conveyance by which the premises are become vested in the purchaser*]. AND WHEREAS it was agreed at the time of the contract for the said purchase that the said (*obligee*) should retain in his hands, out of the purchase money, the sum of £ , for the discharge of the said legacies or portions upon the said children [*or as the case may be*] should respectively attain their ages of twenty-one years, and should execute a bond or obligation in double the amount thereof, with such condition for payment of the same, with interest, as hereunder is written. Now THEREFORE THE CONDITION of the above written obligation is such, that if the said (*obligor*), his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid the said sum of £ , to each of them the said respectively, as and when they shall respectively attain the age of twenty-one years; and in case any or either of them shall die under that age, then if the said (*obligor*), his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid the amount of the legacies or portions of him, her or them so dying unto the said (*vendor*), his executors, administrators, or assigns, (*or unto or between the survivors or survivor of them the said, &c. [or as the case may be]*), his, her or their executors, administrators or assigns, within three calendar months next after his or their respective deaths. AND if the said (*obligee*), his heirs, executors, and administrators, do and shall well and truly pay or cause to be paid interest for the said several sums, until the same shall become payable, after the rate of £ per centum per annum. THEN, &c.

Recital.

CONDITION.

(1) See form *ante*, p. 77.

Obligation.

BONDS.

Pay
(*money lent*).

No. CCXXXII.

Bond for Payment of Money at one time.

Variations where the payment is to be made by instalments.

NOW KNOW ALL MEN, &c. (1). WHEREAS, &c. (*recite loan, &c.*)
CONDITION. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*) [*or. (obligors)* or either of them] his [*or their or either of their*] heirs, executors or administrators, or any other person or persons on his or their behalf, do and shall well and truly pay or cause to be paid unto the said (*obligee*) [*or (obligees)*, or any or either of them] his [*or their or either of their*] (2) executors, administrators or assigns (3) the full sum of £ at,

(1) See form of obligation, *ante*, p. 77.

Executors may sue on bond to testator.

If no place be mentioned money must be tendered to the obligee personally.

(2) Although these words of representation be omitted, yet if the obligee should die before the time of payment arrive, his executors will be entitled to sue upon the bond; see *Emes v. Handcock*, 2 Atk. 507.

(3) When there is no place mentioned for the performance of a condition to pay money, or to do any other act, the obligor must find out the person of the obligee wherever he may be, if within the four seas, otherwise the obligation will be forfeited, but if a place be mentioned he need seek no further; *Perk. S. 780, 781*; *Lit. S. 340, 341*; but as the appointment of a place of payment is in favour of the obligor, and the bond is usually made out by the solicitor of the obligee, it is seldom inserted; and it might indeed be contended, that if a time and place were appointed, and the obligor were to attend and the obligee were not to be there, the penalty of the bond would be saved; and so where the principal money is payable at a future time, with interest in the mean time payable half-yearly, if the interest be not paid on the day appointed, the bond will be forfeited; *Van Sandan v. ———* 1 Sel. and Bar. 215.

Subsequent advances.

If the bond be for payment of money which may subsequently be advanced, it will be necessary that a limit should be placed to such advances, or the bond will require to be stamped with an *ad-valorem* duty of £25 per cent. by 55 Geo. 3. c. 184. which imposes that duty on all bonds where the sum secured to be paid shall be uncertain; and it has been determined, that although the penalty of the bond be considerably less than the sum of £20,000, the highest sum mentioned in the act, it will make no difference; *Scott v. Alsop*, 2 Price, 20.

&c. (1) of lawful money of the United Kingdom of Great Britain

BONDS.

Pay
(money lent).

(1) If it be intended that the money should be paid by instalments; Instalments.
or if a shorter form be wished, say,

"The full sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, after the rate of £5 per cent. per annum, on the same days and times for so much of the sum of £ as shall then remain unpaid, [or with interest for the same of like lawful and current money after the rate of £5 for every £100 by the year, in the manner following, (viz.) the sum of £ being one-fourth part of the said sum of £, together with one year's interest upon the whole of the said sum of £, on the day of now next ensuing, &c. and the sum of £ being the residue of the said principal sum of £ with one year's interest upon the same sum of £ after the rate aforesaid, on, &c. then, &c.] on the days and times, and in the manner hereinafter expressed, (that is to say) the sum of £ part of the said sum of £ on the day of now next ensuing, and the sum of £ other part thereof on the day of, and the sum of £ residue and remainder of the said sum of £ on the day of together with interest, and do and shall make all and every the payments with, &c." as above, and make the said payments with interest after the rate aforesaid for the whole of the said sum of £ to be computed from the day of the date of the above written obligation."

If the payments are to be made half-yearly, say,

To pay money
with the interest
half-yearly.

"The sum of £ yearly and every year for and during the term of from the date hereof, by two even and equal payments, half-yearly in the year, on the day of, and day of in every year during the said term of years, being the interest of the sum of £ hereinafter mentioned, the first payment whereof is to be made on the day of next ensuing the date hereof, and the said principal sum of £ at the end or expiration of years from the date hereof, or within months after notice in writing given to the said, his heirs, executors or administrators, or either of them, by the said, his executors, administrators or assigns, to pay the same after the end or expiration of the said term of years, with lawful interest for the same up to the time of payment, without fraud or delay; then this obligation to be void. But if default shall happen to be made in payment of any of the said several and respective

<u>Bonds.</u> <u>Pay</u> <u>(money lent).</u>	and Ireland, of English value and currency, upon the day of (1) next ensuing the date of the above written obligation, between the hours of and of the clock in the morning, with interest (2) for the same in the mean time (3) after the rate of £5 of like lawful money for every £100 by the year, without any deduction or abatement whatsoever (4). THEN the above written (5)
---	--

half-yearly payments, or any part thereof, being the interest on the said principal sum of £ , on any of the said several and respective days and times above limited for payment thereof, or of the said principal sum of £ at the end or expiration of years from the date hereof, or within months after notice in writing shall be given for that purpose as aforesaid." THEN, &c.

On default in one instalment.

And where the money is to be paid by instalments, and one of them be unpaid at the time appointed, the whole penalty becomes due, and judgment may be obtained at law; see *Coates v. Hewitt*, 1 Wils. 89; *Land v. Harris*, 1 Stra. 515; *Judd v. Evans*, 6 Durnf. and E. 399; but upon payment of the money then due and costs, the obligor will be relieved, letting the judgment however stand as a security for the rest. Vide *ex parte Groom*, 1 Atk. 118; *Collins v. Collins*, 2 Bur. 824.

If no time of payment mentioned in a bond the money payable instant.

(1) If no day of payment be named in the condition, the bond will be payable on the day of the date; and if an action be brought upon it, the Court will refer it to the Master to compute principal, interest and costs, and on payment of the same stay the proceedings; see *Farquhar v. Morrice*, 7 Durnf. and E. 124.

Interest due on bond, though not reserved.

(2) Interest, it has been holden, will be due on a bond even though it be not expressly reserved; See *Farquhar v. Morrice*, 7 Durnf. and E. 124; and the condition of the bond is equally forfeited by failure in payment of interest as of the principal; *Van Sandan v. —* 1 Barn. and Ald. 214.

On non-payment of interest, execution may issue, but only for the sum due.

(3) If the bond be conditioned for the payment of a principal sum on a future day, together with interest until the same be paid, and default should happen in payment of the interest, the Court will not stay proceedings on payment of the interest only and costs, though they may restrain the execution, if the obligee should levy more than the sum then due; see *Tigh v. Craft*, 2 Taunt. 387; *Van Sandan v. —* 1 Barn. and Ald. 214.

Warrant of attorney.

(4) If the bond be accompanied by a warrant of attorney, add,
 "And which said several sum and sums are the same as are mentioned in a certain warrant of attorney intended to bear even date with the above written obligation, authorizing certain attorneys there named to enter up judgment thereupon."

The conclusion of the bond, "Then," &c. material.

(5) If the words at the close of the condition "THEN the above written obligation shall be void" be omitted, the condition will be void, though the obligation will not be affected; but the omission of the following words "or else shall remain in full force and entire" is immaterial, for as their addition adds nothing to, so their omission detracts nothing from the obligation. *Pasc. 9 Jac. K. B. Trewman and Purram's Ca.*

obligation shall be null and void, or else shall be and remain in full force and virtue. Sealed and delivered, &c. (1)

(obligor
and
obligee) (2).

BONDS.
Pay
(money lent).

(1) As it is a requisite that the execution of a bond should be proved by all the subscribing witnesses, it is usual, to prevent the inconveniences which frequently happens in finding them, to have it attested by only one witness.

(2) In practice it is usual for bonds to be signed by the obligors only, but when it is accompanied by a condition of defeasance, as it always now is, it should properly be signed by the obligee also, the obligatory part of the bond being that only which proceeds from the obligor, and the condition from the obligee. But it is not essential that bond should be signed, if sealed and delivered, Hodgkinson, *ex parte*, 11 Ves. 296. See 2 Salk. 462.

BONDS.Pay (Mortgage-
Money).

No. CCXXXIII.

Bond for payment of Money to accompany a Mortgage in Fee (1).

Variations where the Mortgage is by demise. Where the lands Mortgaged are Copyhold. Where they are Leasehold. Where the loan is of Money in the Funds. Where the Money borrowed is to be paid by Instalments.

Recital of mort-
gagee.

KNOW ALL MEN, &c. (2). WHEREAS the said (*mortgagee*) hath this day lent unto the above bounden (*mortgagor*) the sum of £ (3) and by indentures (4) of lease and release, the lease

Use of bond
accompanying
a mortgage.

(1) By means of the bond accompanying a mortgage the mortgagee may recover the deficiency of his debt by action on the bond, in case the estate, on foreclosure and sale, should prove to be inadequate; Took v. Hartly, 2 Brow. Ch. Ca. 125; but as such action will open the foreclosure, an injunction will be issued if the balance be very inconsiderable; Perry v. Barker, 13 Ves. 198.

* Recovery on mortgage not restrained to the amount of the penalty of the bond.

Although, as has been before observed, see *ante*, p. 73. n. (2), that interest for a sum lent upon bond cannot be recovered beyond the amount of the penalty; yet if the creditor have other security also, as a mortgage, whether priorly or subsequently given, the bond will not prevent his recovering the whole interest due to him although it should exceed the penalty of the bond; Peers v. Baldwin, 2 Eq. Ca. Ab. 611. pl. 4; Clarke v. Lord Abington, 17 Ves. 106.

Obligation.
Money in the
funds.

(2) See the form of the obligatory part of a bond, *ante*, p. 73.

(3) If the loan be of money in the funds, or of a sum produced by sale thereof, say,

“WHEREAS the said (*mortgagee*) hath this day lent unto the above bounden (*mortgagor*) the sum of £ or the sum of £ produced by the sale of £ three per cent. Consolidated Bank Annuities, and by indenture,” &c. *as above*.

Mortgage by
demise.

(4) If the mortgage be by demise, say,

“And by indenture bearing or intended to bear even date with the above written obligation, and made or expressed to be made be-

bearing date the day next before the date of the release, and the release bearing or intended to bear even date with the above written obligation, and made or expressed to be made between the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the said (*mortgagor*) hath conveyed and assured certain messuages, lands and hereditaments therein particularly described, unto and to the use of the said (*mortgagee*) and his heirs, subject to a proviso therein contained for the redemption (1) of the said premises upon payment of the said sum, with interest after the rate, at the times and in the manner therein and hereinafter mentioned. AND

 BOWDS.

 Pay (mortgage money).

tween the said (*mortgagor*) of the one part, and the said (*mortgagee*) of the other part, the said (*mortgagor*) hath demised certain messuages, lands and hereditaments therein particularly described, unto the said (*mortgagee*), his executors, administrators and assigns, for the term of five hundred years, at a pepper-corn rent, for securing," &c. *as above*.

If the premises mortgaged be leasehold, say,

Leasehold.

"He the said (*mortgagor*), hath assigned certain messuages, or tenements and premises therein particularly described, unto the said (*mortgagee*), his executors, administrators and assigns, for the residue of the term of years now to come therein for securing," &c. *as above*.

If the premises be copyhold,

Copyholds.

"WHEREAS the above bounden (*mortgagor*), a copyhold or customary tenant of the manor of , in the county of , hath, on the day of the date of the above written obligation, surrendered into the hands of the lord of the said manor certain copyhold or customary messuages, lands and hereditaments, in the said surrender more particularly described, to the use and behoof of the said (*mortgagee*) and his heirs, according to the custom of the same manor, for securing the re-payment of the sum of £ , with interest, at the times and in the manner hereinafter, and in the condition of the said surrender named and appointed, for the payment thereof respectively. AND WHEREAS for better securing," &c. *as above*.

(1) If the loan be of money in the Funds, or of money produced by sale thereof, say,

Money in the Funds.

"For securing the re-transfer of the sum of £ three per cent. Consolidated Bank Annuities, together with payment in the meantime of the amount of the dividends which would have been payable in case the said sum had remained undisposed of."

BONDS.

Pay (mortgage money).

CONDITION.

WHEREAS for better securing (1) the payment of the same, the said (*mortgagor*) hath agreed to enter into the above written obligation with such condition for making void the same as hereinafter is contained. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*mortgagor*), his heirs, executors or administrators, do and shall well and truly pay (2), or cause to be paid unto the said (*mortgagee*), his executors, administrators or assigns (3), the full and just sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, with interest for the same, after the rate of £5 of like lawful money for every £100 by the year, at the times and in the manner following, (that is to say) (4), the sum of £ , being one half year's interest for the said sum of £ , after the rate aforesaid, upon the day of now next ensuing, and the

Mortgagee may sue on covenant or on bond.

Money in the Funds.

Omission of place of payment.

Instalments.

(1) A mortgagee may sue the mortgagor either on the bond or on the mortgage covenant, or both; yet the mortgagor will not be compelled to pay on the bond, unless the mortgagee give security that, upon payment, his deeds shall be delivered up; *Schoole v. Sall*, 1 Sch. and Lef. 177.

(2) If the loan be of money in the Funds, make the condition correspond with that given *ante*, p. 169, n. (1).

(3) The place of payment which is inserted in the proviso for redemption is, it will be perceived, omitted in the condition of the bond for the reasons which have been before given; see *ante*, No. CCXXXII. p. 164. n. (3).

(4) If it be intended that the mortgage money shall be paid off by instalments, see *ante*; or if a more distinct form be required, say,

"The sum of £ , part thereof, together with the further sum of £ , being six months interest for the same, and also for the then remaining sum of £ , after the rate aforesaid, and making together the sum of £ on the day of next ensuing the date of the above written obligation, the sum of £ , other part thereof, together with the further sum of £ , being six months interest for the same, and also for the then remaining sum of £ , and making together the sum of £ , on the day of , which will be in the year ; and the sum of £ , being the residue and in full of the said principal sum of £ , together with the further sum of £ , being six months interest for the same, and making together the sum of £ on the day of , which will be in the year

And do and shall," &c. *as above*.

further sum of £ being the said principal sum of £ , and one other half year's interest for the same, after the rate aforesaid, on the day of then next following, and which will be in the year , (being the same days and times as are appointed in or by the said in part recited indenture of release for payment of the same), and do and shall make all and every the said payments, without any deduction or abatement whatsoever, for or by reason of any taxes, charges, assessments, impositions, cause, matter or thing whatsoever (1), and according to the true intent and meaning of the covenant and proviso in the said in part recited indenture contained in that behalf. THEN, &c. or else, &c.

BOWDS.
Pay (mortgage money).

(1) The condition of the bond is sometimes made to extend to the performance of the covenants contained in the mortgage deed, but as in the pleadings this may occasion difficulty in assigning the breach (for the money in the deed is made payable at a certain place, and in order, therefore, to prove breach of the covenant, the mortgagor must have attended there to receive the money), and consequently embarrass the mortgagee, the better mode is to confine the bond simply to the payment of the money borrowed and interest; see 1 Pow. Mortg. 22.

Mortgage bond should be confined to payment of the money.

BONDS.

*Pay off
mortgage.*

No. CCXXXIV.

**Bond from the Purchaser of an Equity of Redemption to Pay off the Mortgage Money (and indemnify the Mortgagor) (1).*

Recital.

KNOW ALL MEN, &c. (2) WHEREAS by indenture of demise bearing date [or indentures of lease and release bearing date respectively on or about the and days of [if so] on or about the day of , which was in the year , and made or expressed to be made between the (mortgagor) of the one part, and the (mortgagee), therein described, of the other part, certain hereditaments, situate at, &c. and therein particularly described, were conveyed by the said (mortgagor) unto the said (mortgagee) in fee simple [or for the term of years as the case was] for the securing the payment of the sum of £ on the day of then next ensuing, with interest in the mean time by equal half yearly payments after the rate of £ per annum. AND WHEREAS the said principal sum still remains due upon the said security, but all interest for the same hath been paid up to the day of last past. AND WHEREAS the said (mortgagor) hath sold the equity of redemption [and reversion] of the said hereditaments, subject to the said mortgage, and the same by indenture of assignment bearing or intended to bear even date with the above written obligation [or indentures of lease and release, the lease bearing date the day next before the date of the release, and the release bearing or intended to bear even date with the above written obligation], the same have been conveyed [or assigned] to him and his heirs, [or executors, administrators, and assigns], accordingly. AND the said (purchaser) hath agreed to enter into the above written obligation for payment thereof, and indemnifying the said

CONDITION. (mortgagor) therefrom, in the manner hereinafter mentioned. Now

Obligation.

- (1) See *ante*, MOD. PREC. Vol. I. 3d Edit. p. 357 et seq. in notes.
(2) See *ante*, p. 77.

BONDS.

Pay off
mortgage.

THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*), his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid unto the said (*mortgagee*) his executors, administrators or assigns, the said principal sum of £ with all interest to grow or become payable thereupon, in full satisfaction and discharge of the said in part recited mortgage and the covenant therein contained on the part of the said (*obligee*) for payment of the same, and of and from the same and every part thereof, and also all and all manner of actions, suits, claims, and demands whatsoever, as well at law as in equity and otherwise, of, from, or by the said (*mortgagee*), his executors, administrators, or assigns, for, by reason, or in respect of the same or any part thereof, in anywise howsoever, and all costs, charges, damages, and expenses whatsoever, by reason of or in relation thereto, and do and shall well and effectually save harmless and keep indemnified him the said (*obligee*) his heirs, executors, administrators and assigns, henceforth and for ever. THEN, &c.

BONDS.

Pay money
(secured by de-
posit).

No. CCXXXV.

**Bond for Payment of Money advanced upon the deposit of Title Deeds.*

KNOW ALL MEN, &c. (1) WHEREAS the above named (*obligee*) hath this day lent unto the above bounden (*obligor*), the sum of £ , and for better securing the repayment thereof with interest as hereinafter mentioned, the said (*obligor*) hath deposited certain title deeds mentioned in the schedule hereunder written or hereunto annexed, or belonging to certain lands and hereditaments, situated, &c. and as a further security for the said payment he hath also agreed to enter into the above written obligation. Now THE CONDITION. CONDITION of the above written obligation is such, that if the above bounden (*obligor*) his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators, and assigns, the full and clear sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, with interest for the same, after the rate of £5 for every £100 by the year, on the day of next ensuing the date of the above written obligation, full and clear of all deductions and abatements whatsoever. THEN, &c.

Obligation.

(1) See *ante*, p. 77.

BONDS.

Pay money
(to trustees).

No. CCXXXVI.

Bond by Husband to pay to Trustees a sum lent to him in pursuance of a power in Marriage Settlement.

KNOW ALL MEN, &c. (1) WHEREAS in an indenture of release, bearing date the day of , which was in the year , and made or expressed to be made between the said (*husband*) of the first part, the said (*wife*) of the second part, and the said (*trustees*) of the third part, purporting to be a settlement made in contemplation of a marriage then intended, and which afterwards took effect between the said (*husband*) and (*wife*) there is contained a proviso authorising the said (*trustees*), or other the trustees for the time being of the said settlement, at any time after the solemnization of the said marriage, upon the request in writing of the said (*husband*), to lend him out of the trust monies and securities therein mentioned, any sum of money not exceeding the sum of £ sterling, upon his executing a bond or obligation in writing for re-payment of the same, at the time and in the manner therein and hereinafter expressed. AND WHEREAS the said (*trustees*) in pursuance of the authority given to them by the said in part recited indenture have this day lent unto the said (*husband*) out of the trust monies in their hands, the sum of £ ; the receipt of which said sum the said (*husband*) doth hereby acknowledge. Now THE CONDITION of the above written obligation is such, that if CONDITION. the above bounden (*husband*), his heirs, executors, or administrators, or some person on his or their behalf, do and shall well and truly pay or cause to be paid unto the above named (*trustees*), or any or either of them, or the executors or administrators of the survivor of them, or their or his assigns, or other the trustees or trustee for the time being of the said in part recited settlement, the full sum of

(1) See the form of obligation *ante*, p. 77.

BONDS.Pay money
(to trustees).

with interest for the same, after the rate of £5 per cent.
per annum, on the day of , which will be in the
year , without any deduction or abatement whatsoever (1).
THEN, &c. or else, &c.

Indemnity.

(1) If the money be lent without a power being contained for that
purpose in the settlement, add clause of indemnity, as *ante*, p. 137.

BONDS.

Pay money
(wife surviving).

No. CCXXXVII.

*Bond by an intended Husband for payment of a Sum of Money to
Wife on surviving her Husband (1).
Variations where it is of an Annuity.*

KNOW ALL MEN, &c. (2) WHEREAS by an indenture (3) bearing date the _____ day of _____, which was in the year _____, Recital of settlement.
purporting to be a settlement made in contemplation of a marriage then intended, and which afterwards took effect between the said (husband) and the said (wife), and made or expressed to be made between the said (husband) of the first part, the said (wife) of the second part, and the said (trustees) of the third part, the said (husband) in consideration of the said then intended marriage (4) co-

(1) This bond should be entered into with a trustee; but if given to the intended wife herself before marriage, it will be good in equity; for though it will by the marriage be absorbed in law, yet it will in equity be considered as an agreement before marriage, and substantiated accordingly; *Acton v. Acton*, Prec. Chan. 237; *Acton v. Pierce*, 2 Vern. 480. And a bond given by the wife to her intended husband will also be good upon the same principle; *Cannell v. Buckell*, 2 P. Wms. 243.

Bond to be
given to trustees.

(2) See the form of obligation *ante*, p. 77.

(3) When the property is small, and there is no provision to be made for children, it is frequently the practice to dispense with the settlement, and to depend upon the bond of the husband for securing a provision for the wife in the event of his decease; in which case say,

When settlement unnecessary.

"WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said (*intended husband*) and (*intended wife*). AND WHEREAS upon the treaty for the said marriage it was agreed that the said (*intended husband*) should leave the said (*intended wife*) the sum of £ _____, in the event of her surviving him, and should secure the same by entering into the above written obligation with such condition, &c." *as above*.

(4) A bond in notion of law implies a consideration, by reason of its penal and special nature; but as it is in equity considered rather as an

Voluntary bond
void in equity.

BONDS.
Pay money
(wife surviving). venanted to leave or secure to the said (*wife*) his then intended wife, the sum of £ (1), in case she should survive him, to be paid within the space of calendar months after his decease, and it was thereby agreed that the same should be secured by the bond or obligation of the said (*husband*) with such condition for making void the same as hereinafter is expressed. Now THE CONDITION of the above written obligation is such, that if the said (*wife*) shall survive him the said (*husband*) (2), and the said (*husband*) do and shall in and by his last will and testament bequeath or direct to be paid unto the said (*wife*), her executors, administrators, or assigns, the full sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland, within the space of calendar months next after his decease, and if his executors or administrators do and shall well and truly pay the same within the said space or period aforesaid, without any deduction or abatement whatsoever, for her and their own proper use and benefit (3). THEN, &c. or else, &c.

as against third persons. agreement between the obligor and obligee, than as a security on the part of the obligee only, it will be set aside there in favour of third persons, if proved to be given without or for an illegal consideration; *Clarke v. Periam*, 9 Mod. 340, 2 Atk. 333, S. C.; *Debenham v. Oxe*, 1 Ves. 276; it is proper therefore that the reason of the bond should be recited; *Traiton v. Traiton*, 1 Vern. 413; it will however be good against the obligor himself; *Wright v. More*, 1 Ch. Rep. 157.

Annuity. (1) If bond be to leave the wife annuity, say,
 “An annuity or clear yearly sum of £ for the term of her natural life.”

Annuity. (2) If the condition of the bond be to leave the wife an annuity, say,

“If the said wife shall survive him the said (*husband*), and the said (*husband*) do and shall by his last will and testament in writing, bequeath and well and sufficiently secure unto the said (*wife*) and her assigns, one annuity or clear yearly sum of £ during the term of her natural life, to be payable and paid by equal quarterly payments in each year, with proper and effectual powers and remedies for recovering the same. THEN, &c. or else, &c.

(3) See also *post*. p. 179.

BONDS.

Pay money
(wife's appointee).

No. CCXXXVIII.

**Bond by an intended Husband upon his Marriage, for the Payment of a sum of Money [or an annuity] to his Wife or her Appointees upon his decease, if she survive him, and to permit her to make a Will.*

KNOW ALL MEN, &c. (1). WHEREAS a marriage is intended to be shortly had and solemnized between the said (*obligor*) and (*intended wife*) of, &c. AND WHEREAS the said (*obligor*) has agreed in consideration of the property which upon the said marriage taking effect he will become entitled to, in right of his said wife, in the manner mentioned in a certain indenture of even date with the above written obligation, and made between the said (*intended wife*) of the first part, the said (*obligor*) of the second part, and the said [*obligees* being trustees], to bequeath or otherwise secure unto her the sum of £ upon his decease in her life-time, or to her appointees in case of his surviving her. NOW THE CONDITION CONDITION. of the above-written obligation is such, that if the said intended marriage shall take effect, and he the said (*obligor*), his heirs, executors, and administrators, do and shall by his last will and testament or otherwise secure and cause to be paid unto the said (*intended wife*) his intended wife, within the space of six calendar months next after his decease, in case she shall survive him, and in case of his departing this life in the life-time of her the said (*intended wife*), then unto such person or persons as she the said (*intended wife*), notwithstanding her coverture, shall by any deed, will, or codicil, or any writing or writings in the nature of or purporting to be such, direct or appoint, the full and clear sum of £ of lawful money of the United Kingdom of Great Britain and Ireland (2), to and for her and their own proper use

(1) See form of obligation, *ante*, p. 77. See also Notes to No. Obligation. CCXXXIV. *ante*, p. 172.

(2) If an annuity, see *ante*, p. 173. n. (2).

Annuity.

BONDS.

*Pay money
(wife's appoint-
tee).*

And make will.

and benefit, and if the same shall be well and truly paid accordingly. AND also if the said (*obligor*), do and shall permit and suffer the said (*intended wife*) his intended wife from time to time, notwithstanding her coverture, to make, sign, seal, deliver, and publish, any deed or deeds, or other writing or writings, in the nature of or purporting to be any deed or deeds, will or testament, or codicil or codicils, and thereby freely and without restraint, threats or persuasion, to give and dispose of the whole of the said sum of £ , or any part thereof, to such person or persons, and in such manner as she the said (*intended wife*) shall direct or appoint, or give, bequeath, or assign the same, or express or intend so to do. AND also if the said (*obligor*) shall from time to time do and cause to be done, all and every such acts, matters, and things as may be requisite or proper to confirm or give effect to all and every such deed, will, codicil, direction, appointment, or other instrument, gift, or disposition, according to the true intent and meaning thereof. THEN, &c.

BONDS.

Pay money
(gratuitous
recompense).

No. CCXXXIX.

**Bond for Payment of a sum of Money to a person as a recompense for recovering an Estate for the Obligor (1).*

KNOW ALL MEN, &c. (2) WHEREAS, &c. [*recite the will or other means through which the obligor claims the title to the property in question.*] WHEREAS the said (*obligor*) being unable to sustain the expense of the legal proceedings requisite to support his said claim, and obtain possession of the said premises, has requested the said (*obligee*) to advance and defray the expenses thereof, which he hath consented to do, and to save harmless the said (*obligor*) from the same, upon the said (*obligor*) entering into the above written bond or obligation conditioned for the payment to him of the sum of £ on having lawful possession of the said premises. NOW THE CONDITION. CONDITION of the above-written obligation is such, that if the said (*obligor*), his heirs, executors, and administrators, do and shall well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators, and assigns, the full and clear sum of £ of lawful current money of the United Kingdom of Great Britain and Ireland, within the space of calendar months next after he the said (*obligor*), his heirs, executors, and administrators, shall be put into the lawful and quiet possession of the messuages, &c. [*or as the case may be*] hereinbefore described or particularly referred to, free from or well and efficiently indemnified by the said (*obligee*), his heirs, executors, or administrators, from and against all covenants, charges and expenses whatsoever incurred in or for the recovery of the same. THEN, &c.

(1) A bond or other security given for payment of a sum of money or other collateral recompense to a person advancing the means of recovering an estate, &c. will be good, but any promise or guarantee for giving up to him a portion of the thing itself when recovered, will be void. Recompense bond good.

(2) See *ante*, p. 77.

Obligation.

BONDS.Pay (purchase money).

No. CCXL.

Bond for Payment of part of Purchase Money retained on account of Minority or other cause (1).

KNOW ALL MEN, &c. (2) WHEREAS, &c. [*recite the conveyance to the purchaser*]. AND WHEREAS upon the treaty for the said purchase it was agreed that the sum of £ , being the proportion of the said (*infant*) in the said purchase money or sum of £ should be retained by and remain in the hands of the said (*purchaser*) at interest, after the rate hereinafter mentioned, until the said (*infant*) should attain his age of twenty-one years, and execute such conveyance of his said part of the said hereditaments as hereinafter is mentioned. NOW THE CONDITION OF the above written obligation is such, that if the above bounden (*purchaser*), his heirs, executors, or administrators, do and shall, when and as soon as the said (*infant*) or his heirs shall have duly signed, sealed, delivered, and executed such conveyance, confirmation, or other assurance as the counsel in the law of the said (*purchaser*), his heirs, or assigns, shall reasonably require of one full part

Vendor's lien
for purchase
money.

(1) It was formerly holden that a vendor's equitable lien upon the land for the purchase money, if not paid, was lost, by his taking a distinct and independent security for it, 6 Ves. Jun. 483; and in *Fawell v. Heelis*, Lord Bathurst held that where the vendor took a bond for the purchase money he had thereby departed from his lien. See *Amb. 724*; 1 *Brow. Ch. Ca. 421, n.*; 2 *Dick. 485*. This opinion, however, has been since overruled, and it appears now to be quite settled, that taking a covenant, bond or note for the purchase money, or any part, will not discharge the vendor's equitable lien on the estate; *Ex-parte Peate*, in 1 *Madd. 346*; *ex-parte Loaring*, 2 *Rose, 79*; *Blackburne v. Gregson*, 1 *Con. 90*; *S. C.* 1 *Bro. Ch. Ca. 421*; *Nairne v. Prowse*, 6 *Ves. 752*; *Hughes v. Kearney*, 1 *Sch. and Lef. 132*; *Grant v. Mills*, 2 *Ves. and Bea. 306*; unless such appear to be the express intent of the parties.

Obligation.

(2) See the form of the obligatory part of a bond, *ante*, p. 77.

of, or in the several hereditaments and premises hereinbefore described, and meant and intended to be granted and released by the said in part recited indentures of lease and release, unto and to the use of the said (*purchaser*), his heirs and assigns, or otherwise, as he or they shall direct, well and truly pay or cause to be paid as aforesaid unto him the said (*infant*), his executors, administrators, or assigns, the said sum of £ , so agreed to be retained by the said (*purchaser*) as aforesaid, he the said (*infant*), his heirs, executors, or administrators, signing and giving a proper and sufficient acquittance for the same, together with interest for the same, after the rate of four per cent. per annum (1), to be computed and accounted from the day of the date of these presents, clear of all abatements and deductions whatsoever, the property tax only excepted. THEN, &c. or else, &c.

BONDS.

 Pay (*purchaser*
money).

(1) When any part of the purchase money is suffered to remain in the hands of the purchaser for the purposes of paying off incumbrances, it is a settled rule that it shall bear interest; *Hughes v. Kearney*, 1 Sch. and Lef. 134; and four per cent. is the rate of interest purchasers are usually required to pay for such money; *Calcraft v. Roebuck*, 1 Ves. Jan. 221.

Rate of interest.

BONDS.

*Pay money
(partner de-
ceased).*

No. CCXLI.

Bond from a surviving Partner for the Payment of Share of Capital Stock to the Executors of deceased Partner (1).

Variations where there are several surviving partners.

Recital of deed
of copartnership.

KNOW ALL MEN, &c. (2) WHEREAS by indenture bearing date the day of , which was in the year and made or expressed to be made between the above bounden (*surviving party*) of the one part, and the said (*deceased party*) of the other part, they the said parties agreed to become co-partners in the trade or business of . from the date thereof for the term of years, under and subject to certain conditions and agreements therein contained; and it was amongst other things thereby agreed and declared, that in case either of the said parties thereto should depart this life, during the continuance of the said co-partnership, the survivor of them, and the executors and administrators of the survivor, should stand charged with the value of the clear balance, and share or shares, which on the then last annual account might appear to be due unto the deceased partner, together with an allowance of £ per cent. thereon from the last settlement of accounts, in lieu of interest and of profits in trade, after deducting all such payments and debts as might be received by and be due from the deceased party from and unto the said co-partnership since the last settlement of accounts. AND that the surviving partner should execute and deliver a bond, at his expense, for payment to the executors or administrators of such deceased partner of such balance or share, with interest on the gross amount thereof, from the day of such decease, after the rate of £5 per cent. per annum, within the space of calendar months then next thereafter, by equal payments, to be made at the times hereinafter mentioned. AND WHEREAS the said co-partnership hath

Obligation.

- (1) See *ante*, MOD. PREC. Vol. VII. 3d Edit. p. 13 et seq. in notes.
(2) See the form of obligation, *ante* p. 77.

DOWDS.

Pay money
(partner de-
ceased).

been carried on by the said parties in pursuance of the said in part recited indenture, until the day of last past, when the said (*deceased partner*) departed this life, having first duly made and published his last will and testament in writing, and appointed the said (*executors*) the executors thereof, who after his decease, duly proved the same in the prerogative court of the Archbishop of Canterbury. AND WHEREAS the clear balance or share due to the said (*deceased partner*) in respect of the said co-partnership, on the last day of settlement of the accounts thereof next preceding the decease of the said (*deceased partner*), viz. on the day of amounted to the sum of £ which with the said allowance of £ per cent. thereon as aforesaid, make together the sum of £ . NOW THE CONDITION of the above written obligation is such, that if the above bound (*obligor*), his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said (*obligees*) or one of them, their or either of their executors or administrators, the full sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, with interest for the same after the rate of £5 of like lawful money, for every £100 by the year, at the times and in the manner following, that is to say, the sum of £ part thereof, together with interest for the whole of the said sum of £ after the rate aforesaid on the day of next ensuing the date of the above written obligation; the further sum of £ being other part thereof, on the day of , together with interest for the same, and also for the remaining sum of £ up to that time; the further sum of £ being the residue and remainder of the said sum of £ on the day of which will be in the year , together with interest upon and for the same up to that time. AND also do and shall from time to time, and at all times for the space of six years, from the date of the above written obligation, well and effectually indemnify, protect, and save harmless the said (*obligees*), their executors, administrators, and assigns, and their respective lands and tenements and goods and chattels; and also the lands and tenements and goods and chattels of the said (*deceased partner*), of and from all debts and sums of money, and other claims and demands whatsoever, which now are or shall or may at any time hereafter be or become due to any person or persons, or body or bodies politic or corporate whomsoever or whatsoever, for or on account of the said late co-partnership. THEN, &c. or else, &c.

BONDS.Pay rent.

No. CCXLII.

*Bond for Payment of Rent and Performance of Covenants in a Lease (and to indemnify the Vendor).**Variations* where the Vendor is an Assignee of the Premises (1).

Where the Bond is given for the Performance of Covenants generally (2).

KNOW ALL MEN, &c. (3) WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*) for the purchase of certain leasehold messuages or tenements and premises situated at for the residue of a certain term of years, now to come therein, at or for the price or sum of £ subject to the payment of the yearly rent of £ and to the performance of certain covenants reserved and contained in an indenture of lease bearing date the day of which was in the year , and made or expressed to be made between (*the lessor*) therein described, of the one part, and the said (*vendor*) of the other part; and by an indenture bearing even date with the above written obligation, and made or expressed to be made between the said (*vcndor*) of the one part and the said (*purchaser*) of the other part, the same premises have been assigned to him the

Lessee liable
notwithstanding
assignment.

(1) A lessee notwithstanding assignment continues liable to the payment of the rent and performance of the covenants of the lease, but an assignee is no longer liable than whilst he holds possession of the premises; *Taylor v. Shum*, 1 Bos. and Pul. 21. Where, therefore, the vendor is an assignee of the premises no indemnity will be requisite against such rent or covenants, unless where he entered into some security for indemnifying his vendor, in which case recite the assignment and covenant or bond entered into by him for that purpose.

Extent of bond.

(2) Where a bond is given generally for the performance of covenants in a lease, it extends to breaches of implied as well as express covenants. See *Iggulden v. May*, 9 Ves. 330.

Obligation.

(3) See the form of the obligatory part of a bond, *ante*, p. 77.

said (*purchaser*) accordingly. AND WHEREAS the said (*purchaser*) hath agreed to indemnify the said (*vendor*) from the payment and performance of the said rent and covenants, and to enter into the above-written obligation for that purpose with such condition for making void the same as hereinafter is expressed.

HOWE.

Pay rent.

NOW THEREFORE THE CONDITION (1) of the above written obligation is such, that if the above bounden (*purchaser*), his executors, administrators or assigns, do and shall from time to time, and at all times hereafter, during the residue or remainder which is now to come and unexpired of the said term or period of _____ years (or during such part or portion thereof as he or they shall or lawfully may have and enjoy peaceable and quiet possession, under or by virtue of the hereinbefore in part recited indenture of assignment, of the said messuage or tenement and premises thereby expressed to be assigned, according to the true intent and meaning thereof, against the said (*vendor*), his executors and administrators, and all persons claiming from, under or in trust for him or them) well and truly pay, or cause to be paid, the yearly rent of £ _____ in or by the said hereinbefore in part recited indenture of lease reserved, at such times and in such manner as the same is thereby made payable after the _____ day of _____ now last past, and also do and shall observe and perform all and every the covenants, provisoes, clauses, and conditions, which from henceforth during the same time or period, on the part or behalf of the tenant of the said premises, are or ought to be observed and performed for or in respect thereof, or of any part thereof; and do and shall from time to time and at all times hereafter protect, defend, keep harm-

CONDITION.

(1) If the bond be conditioned for the performance of covenants generally, say, Performance of covenants.

"NOW THE CONDITION of the above-written obligation is such, that if the above-bounden (*obligor*), his heirs, executors, or administrators, do and shall well and truly observe, perform, fulfil, and keep all and singular the covenants, provisoes, declarations, conditions, and agreements comprised or mentioned in a certain indenture bearing or intended to bear even date with the above-written obligation, and made or expressed to be made, &c. which on the part and behalf of the said (*obligor*) are thereby required to be observed, performed, fulfilled, and kept respectively, according to the purport and true intent and meaning of the same and of the said parties thereto. THEN, &c. or else," &c.

BONDS.Pay rent.

less and indemnified the said (*vendor*), his executors and administrators, and his and their lands and tenements, goods, chattels, and effects from and against the same rent (1), covenants, and agreements, and of and from all actions, suits, costs, charges, damages, and expenses whatsoever, which he, they, or any, or either of them, shall or may pay or sustain, or which shall or may arise or be occasioned by the non-payment, non-performance, or non-observance thereof respectively, or of any of them. THEN, &c. or else, &c.

Vendor an assignee.

(1). When the vendor is an assignee of the premises, say,

“ From and against the said in part recited bond or obligation [*or covenant (as the case may be)*] so entered into or given by him the said (*vendor*) for payment and performance of the same rent and covenants respectively, and of and from all actions, &c.” *as above*.

Stamp.

*** A bond conditioned for the payment of an annual rent is within 55 Geo. 3. c. 184, imposing a duty on bonds given as a security for the payment of any definite and certain sum of money, and must accordingly, it should seem, be stamped with the ad-valorem duty upon the gross amount of the rent reserved for the whole term, it being a bond for the payment of that sum at future periods. See *Attree v. Anscomb et al.* 2 Maul. and Selw. 88.

BONDS.

Perform
(award).

No. CCXLIII.

Bond to perform Award upon the submission of Disputes to Arbitration (1).

KNOW ALL MEN, &c. (2) WHEREAS disputes having arisen between the said (*obligor*) and (*obligee*) relative to [*here state the subject of difference*] they the said (*obligor*) and (*obligee*), by an indenture bearing even date with the above written obligation, and made or expressed to be made between the said (*obligor*) of the one part, and the said (*obligee*) of the other part, have referred the same to the judgment and determination of (*the arbitrators*) of, &c. and have agreed to execute mutual bonds for the performance of the award of the said (*arbitrators*), with such condition to be thereunder written, for making void the same as hereinafter is expressed. NOW THE CONDITION OF the above written obligation is such that if the above bounden (*obligor*), his heirs, executors, and administrators, do and shall well and truly observe, perform, and keep the award, order, arbitrament, and final determination of the said (*arbitrators*) and of such other person as they shall or may by virtue of the power to them given in or by the said in part recited indenture of submission, name and appoint to be umpire between them, or to assist them in or concerning the premises, of and concerning the matters and things so referred to them the said (*arbitrators*) as hereinbefore is mentioned, or in anywise relating thereto; and also if the said (*obligor*) his heirs, executors, and administrators, do and shall well and truly perform, observe, fulfil, and keep all and every the covenants, clauses, conditions, stipulations, and agreements in the said in part recited indenture of submission contained, on the part and behalf of the said (*obligor*), his heirs, executors, or administrators to be observed, performed, fulfilled, and kept, according to the true intent and meaning of the same respectively. THEN, &c. or else, &c.

(1) An action at law is not maintainable for the performance of a covenant to refer disputes to arbitration, because of its having a tendency to exclude the jurisdiction of the courts, and because it cannot be certain that the plaintiff would have had an award in his favour, and therefore it is not known that he is damnified for want of the reference; *Pattersall v. Groote*, 2 Bos. and Pul. 131. Gow. 116. 125. 127; and whence the propriety of a bond.

(2) See the form of the obligatory part of a bond, *ante*, p. 77.

Obligation.

BONDS.

Perform
(building con-
tract).

No. CCXLIV.

**Bond from a Builder and Sureties for Performance of a Contract
for erecting Buildings.*

Recital.

KNOW ALL MEN, &c. (1), WHEREAS, &c. [*recite the agreement for erecting buildings, &c.*] (As in and by the said in part recited articles of agreement, relation being thereunto had, will more fully and at large appear.) AND WHEREAS previously to and at the time of entering into the said contract, it was agreed that the said (*builder*), together with two persons as his sureties, should enter into a bond or obligation in the penalty above mentioned, conditioned for the due performance of the said contract, in conformity to the said articles of agreement. AND WHEREAS the said (*builder*) has proposed, and (*employer*) has accepted the

CONDITION.

above-named (*sureties*) as sureties for this purpose. NOW THE CONDITION of the above-written obligation is such, that if the above bounden (*builder*), his executors, administrators or assigns, do and shall execute, perform, and perfect, or cause and procure to be executed, performed, and perfected in a good, substantial, and workman-like manner, and to the reasonable satisfaction of the surveyor or surveyors, to be employed by the said (*employer*), his executors, administrators, or assigns, either to superintend the said building in its several stages of progress, or to survey and examine the same after it shall have been erected and finished, AND all and every the bricklayers, carpenters, masons, plasterers, painters, plumbers, smiths, and other works or business which shall be necessary or required to be done, performed, or executed in and about the erecting, constructing, finishing, and completing of the said building. AND also do and shall perform and execute, or cause or procure to be performed and executed, all and every the said work with such good bricks, lime, timber, and other materials, as are mentioned and par-

Obligation

(1) See form of obligation, *ante*, p. 73, and notes.

ticularized in or by the said articles of agreement. AND also if the said (*builder*), his executors, administrators or assigns, do and shall finish and complete the said building, with the out-houses and appurtenances thereto, or cause the same to be completed and finished in the manner aforesaid, and according to the true intent and meaning of the said articles of agreement, upon or before the day of

next ensuing the date of the said articles of agreement.

AND also do and shall well and truly observe, perform, fulfil, and keep all and every the covenants, contracts, clauses, articles, and agreements contained in the said articles of agreement, and which, by or on the part of the said (*builder*), his executors or administrators, are or ought to be observed, performed, fulfilled, and kept, within such times and in such manner, in all respects, as in the said articles of agreement are mentioned or required, according to the true intent and meaning of the same, and of the specifications, plans, elevations, sections, and drawings therein-mentioned or referred to, then the above-written bond or obligation shall be void and of no effect, but otherwise shall be and remain in full force and virtue. THEN, &c.

BONDS.

*Perform
(building con-
tract).*

BONDS.

*Perform (cove-
nants
advowson).*

No. CCXLV.

Bond for the Performance of Covenants in a Grant of the next Presentation to an Advowson (1).

KNOW ALL MEN, &c. (2) WHEREAS the said (*purchaser*) hath contracted with the said (*patron*) for the absolute purchase of the next turn or right of presentation to the rectory and parish church of _____, upon the decease, resignation, cession, or deprivation of A. B., the present incumbent thereof, or other the avoidance of the said church, at the price or sum of £ _____; and by an indenture bearing even date with these presents, and made or expressed to be made between the said (*patron*) of the one part, and the said (*purchaser*) of the other part, the same hath been, or is thereby expressed to be conveyed to him the said (*purchaser*) accordingly. AND WHEREAS upon the treaty for the said purchase, it was agreed that the said (*patron*) should enter into a bond or obligation in writing, with such condition to be thereunder written, for the due performance of the covenants therein contained on the part of the (*patron*) as hereinafter is expressed. NOW THE CONDITION of the above written obligation is such, that if the said (*purchaser*), his executors, administrators, and assigns, shall or lawfully may present a fit and able person to the advowson, rectory, and parsonage or church of _____ aforesaid, whenever it shall next happen to become vacant; and if the person who shall be so presented by the said (*purchaser*), his executors, administrators, or assigns, under or by virtue of the said indenture, shall be instituted and in-

CONDITION.

Bond for performance of covenants, recommended to be taken on purchase of advowson.

Obligation.

(1) Mr. Fearn, as appears by an opinion of his inserted in his *Posthumous Works*, p. 404, used to recommend the covenants for the title, on the purchase of the next presentation to an advowson, to be accompanied by a bond for the performance of them, which on account of the uncertainty that in many cases subsists, whether the purchase be not simoniacal, may sometimes be advisable.

(2) See the form of the obligatory part of a bond, *ante*, pp. 73. 77.

ducted into the said rectory, parsonage, or parish church of aforesaid, and quietly and peaceably have, hold, and enjoy the same, without any suit, trouble, denial, hindrance, molestation, or disturbance of or by the said (*patron*), or any other person or persons whomsoever, lawfully or rightfully claiming or possessing any estate, right, title, or interest in, to, or concerning the said advowson, rectory, and premises, or any part thereof, from, through, or under him the said (*patron*), or any of his ancestors, or any of his or their acts, means or defaults; AND also, if he the said (*patron*), his executors, administrators, and assigns, and all and every other person or persons whomsoever, claiming or possessing any estate, right, title, interest in or to the said advowson, rectory, parsonage, or church of aforesaid, shall and will from time to time, and at all times hereafter, at the cost and expense of the said (*purchaser*), his executors, administrators, or assigns, make, do, perform, and execute all such further and other reasonable acts, deeds, conveyances, assurances, matters and things whatsoever, for the further, better, and more perfectly or satisfactorily granting, assuring, and confirming the said next term, avoidance, and presentation of, in and to the said advowson, rectory, parsonage, or church of aforesaid, unto the said (*purchaser*), his executors, administrators, or assigns, and for procuring the institution, induction, and full possession of him the said (*purchaser*), his appointees or assigns therein and thereto, in such manner as he the said (*purchaser*), his executors, administrators, appointees, or assigns, or his or their counsel in the law, being of the degree of a barrister, shall advise and require, according to the purport and true intent and meaning of the covenants, provisoes, declarations, and agreements in the said indenture contained concerning the same. THEN, &c. or else, &c.

BONDS.

*Perform (covenants
advowson).*

BONDS.

*Perform cove-
nants
(copartnership).*

No. CCXLVI.

Bond for Performance of Covenants (and indemnity) on Dissolution of Copartnership (1).

Recital of co-
partnership.

KNOW ALL MEN, &c. (2) WHEREAS the above bounden (*continuing party*) and the above named (*retiring party*) have for some time past been copartners together in the trade or business of

Of deed of dissolution.

AND WHEREAS by an indenture bearing or intended to bear even date with the above written obligation, and made or expressed to be made between the said (*continuing party*) of the one part, and the said (*retiring party*) of the other part, it was agreed and declared, that the said copartnership should from thenceforth be dissolved and determined, and that the said (*retiring party*) should assign all his interest therein to the said (*continuing party*) which the said (*retiring party*) hath accordingly done by indenture of even date with the said indenture last mentioned, and made or expressed to be made between the said (*retiring party*) of the one part, and (*continuing party*) of the other part; and upon the treaty for the said dissolution, it was further agreed that the sum of £ , being part of the sum therein mentioned to have been brought into the said trade by the said (*retiring party*) in increase of the capital thereof, should be repaid to him by equal payments on the day of , the day of , the day of , and the day of ; together with the further sum of £ , as or for one half part of the value of the stock in trade then belonging to the said copartnership; and also that the said (*continuing party*) should take upon himself the payment of all debts then owing from the said copartnership trade; and it was further agreed that the said sums should be

Obligation.

(1) See *ante*, MOD. PREC. Vol. VII. No. XIII.

(2) See the form of the obligatory part of a bond, *ante*, pp. 73. 77.

secured by several bills of exchange to be accepted by the said (*continuing party*) in favor of and payable to the said (*retiring party*) or his order at the times aforesaid, and also by the bond or obligation in writing of the said (*continuing party*) for securing the punctual payment of the said notes when due, and the observance and performance of the several clauses and agreements in the said indenture of dissolution contained on the part of the said (*continuing party*) to be observed and performed, and the said bills of exchange have been accordingly given, as the said (*retiring party*) doth hereby acknowledge. Now THE CONDITION of the above written obligation is such, that if the above bounden (*continuing party*), his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid all and every of the said several bills of exchange so accepted by him the said (*continuing party*) to or in favor of the said (*retiring party*) or his order as aforesaid, as and when the same respectively shall, according to the law or custom of merchants, become payable. AND also do and shall well and effectually indemnify, protect and save harmless the said (*retiring party*), his executors, administrators, and assigns, of and from all debts and sums of money, and other claims and demands whatsoever which are now due or growing due from them the said (*continuing party*) and (*retiring party*) or either of them, or which shall or may at any time hereafter be or become due from him the said (*continuing party*), his executors or administrators, for or on account of the said copartnership or joint trade, and in all things well and truly observe, fulfil, perform, and keep all and singular the aforesaid and other the covenants, conditions, clauses, stipulations and agreements in the said hereinbefore in part recited indenture of dissolution contained, which on the part and behalf of the said (*continuing party*), his heirs, executors, or administrators, are or ought to be observed, fulfilled, performed, and kept, according to the true intent and meaning of the same respectively. THEN, &c. or else, &c.

BOND.

Perform cove-
nants
(copartnership).

CONDITION.

BONDS.Perform voyage
(master).

No. CCXLVII.

**Bond from a Master of a Ship to an Owner, to Perform Voyage and deliver up the Ship when performed (1).*

KNOW ALL MEN, &c. (2) WHEREAS the above named (*obligee*), at the request of the above bound (*obligor*), hath agreed to employ the said (*obligor*) to serve as master of the ship or vessel called the _____, of the burthen of _____ tons, or thereabouts, now bound to the _____, for such voyage, and so long time as the said (*obligee*) or other the owner, or part owners thereof for the time being, shall think fit, and hath thereupon delivered the actual possession of the said ship, with her appurtenances, unto the said (*obligor*). **CONDITION.** Now THE CONDITION of the above written bond or obligation is such, that if the said (*obligor*) shall and do, at all times hereafter, follow all such lawful orders and directions relating to the said ship or vessel, and perform such voyage or voyages as the said (*obligee*), his executors, administrators, or assigns, or other the owner or part owners thereof, or the major part of them, shall from time to time give and direct, and shall at all times use his utmost care for preserving the said vessel, with her appurtenances, from all spoil and damage, and shall not, directly or indirectly, do or suffer or procure to be done, any act or thing whatsoever whereby the said ship or vessel shall or may be forfeited, seised, extended, charged or chargeable. AND also, if the said (*obligor*) shall and do peaceably and quietly deliver up the said ship, and the actual possession thereof, unto the said (*obligee*), or unto such other person or persons as the said (*obligee*) or other the owner or part owners thereof, or the major part of them, shall for that purpose order and appoint, together with all and singular the furniture, tackle, apparel, and other appurtenances and things what-

(1) See also next Precedent, p. 198.

(2) See *ante*, p. 77.

WORDS.Perform voyage
(master).

soever now or then to the said ship or vessel belonging (reasonable wear and tear thereof excepted), free of all charges and incumbrances whatsoever to be done, committed, or wilfully suffered by the said (*obligor*) in anywise howsoever. AND if the said (*obligor*) shall and do, from time to time, upon request of the said (*obligee*), his executors, administrators or assigns, or other the owners or part owners thereof, or the major part of them, make ready and give unto him or them a just and true account in writing of all freight and monies which he shall from time to time receive, pay, or disburse for or on account of the said ship or vessel, and all other matters and things relating to the service and employment thereof, and of all affairs and transactions in and about the same, and shall and do pay to the said (*obligee*), his executors or assigns, or other the owner or part owners thereof, or some of them, all such sum and sums of money as he shall from time to time receive, and which shall appear to belong and be due and payable to the said (*obligee*), his executors, administrators or assigns or other the part owners respectively of the said ship. THEN, &c.

BONDS.Perform voyage
(master).

No. CCXLVIII.

**Bond from a Chief Mate of a Ship to Perform Voyage and deliver up the Ship, in case of death of Master.*

KNOW ALL MEN, &c. (1) WHEREAS by a charter-party made on or about the day of , in the year of our Lord , &c. [*recite shortly the charter-party*] as thereby (relation being thereunto had) will appear at large. AND WHEREAS the above bounden (*obligor*) is retained and admitted by the said (*obligees*) to serve and go as first mate of and in the said ship during the said intended voyage, and to succeed the said (*master*), the present master of the said ship, and to be and act as master thereof in case of the decease of the said (*master*), during the said voyage, and thereupon to do and perform all matters relating to the said ship and her intended voyage, as well those contained or required in or by the said recited charter-party, as in any other writings or orders given by and under the hands of the said (*obligees*) or others the part owners of the said ship, or the major part of them. Now

CONDITION. THEREFORE THE CONDITION of the above written obligation is such, that if during the said intended voyage the said (*master*) shall happen to depart this life, and the said (*obligor*) shall him survive, and he the said (*obligor*) shall and do immediately thereupon take upon himself the office, care, management, and government of the said ship, as master thereof, for the then residue of her said voyage; and do and shall well and truly observe and perform all and every the covenants, articles, clauses, and agreements, contained or mentioned in the said recited charter-party, to be by the master thereof observed or performed, relating to the said ship and her said intended voyage, and the cargo of (*species of merchandise*) and effects and produce thereof, and all other matters and things whatsoever by and on the part and behalf of the said master to be performed in any

manner howsoever ; and shall and do observe and perform the orders, directions, and instructions given by the part owners of the said ship, or the major part of them respectively, relating to the said premises, as far as may or can be ; and also if the said (*obligor*) do and shall make and give a just and true account in writing, of all monies, goods, effects, and other things whatsoever, which he shall receive, or which shall be delivered or come to his charge, care, custody, or possession, or wherewith he shall or ought to be charged or chargeable, and deliver the same to the person or persons to whom the same shall belong, or be ordered and consigned, and duly acquit and discharge himself therefrom ; and also shall and do (the perils and dangers of the seas and other inevitable accidents excepted) deliver the actual possession of the said ship to the said (*obligees*), or other the part owners thereof, with all her appurtenances, stores, and provisions, and free of all debts and incumbrances by him the said (*obligor*) to be committed. THEN, &c. IN WITNESS, &c.

MONDE.

Perform voyage
(master).

BONDS.Post-obit.

No. CCXLIX.

A Post-Obit Bond (1).

KNOW ALL MEN, &c. (2). WHEREAS the above bounden (*obligor*) is in expectation of receiving a considerable sum of money and other property upon the decease of (*the father*) of, &c. his father. AND WHEREAS the said (*obligor*) is now of the age of years or thereabouts, and the said (*father*) is of the age of years or thereabouts, and in good health. AND WHEREAS the said (*obligor*) having occasion for the sum of £ to supply his immediate occasions, hath applied to the said (*obligee*) to lend him the same upon his entering into the above-written obligation, together with a warrant of attorney for entering up judgment thereupon, to secure the payment of the sum of £ within calendar months after the decease of the said (*father*), in case the said (*obligor*) shall survive him, but with such condition for making void the said obligation and judgment as hereinafter is mentioned. Now THE CONDITION of the above written obligation is such, that 'if the above bounden (*obligor*) shall happen to survive and outlive the said (*father*), his said father, and in that case if the said (*obligor*), his heirs, executors, or administrators, shall and do, within

CONDITION.

Post-obit bond
not usurious.

(1) A post-obit bond is not impeachable on the grounds of usury, even though entered into upon terms of gross inequality; *Wharton v. May*, 5 Ves. 27. But it is a security very jealously regarded by the courts of equity, and has often been disputed with success; *Lushington v. Waller*, 2 Hen. Blac. 95, and see *Bernall v. Marquis of Donegal*, 3 Dow. 133. *Curting v. Marquis of Townsend*, 19 Ves. 628.

This species of bond being for the payment of a sum certain, and at a time rendered certain by the happening of the event, and a mere matter of computation, is not within the 8 and 9 William 3. c. 11. (sec. 8), but for these reasons seems to be within the 4 and 5 Ann. c. 16. (sec. 12). See *Murray v. Stair*, 2 Bar. and Cress. 82, 83. *Dow. and Ryl.* 278.

Obligation.

(2) See obligation *ante*, p. 77.

calendar months next after the decease of the said (*father*), well and truly pay, or cause to be paid, unto the said (*obligee*), his executors, administrators, or assigns, the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, without any deduction or abatement whatsoever, for or by reason of any cause, matter, or thing whatsoever, or if the above bounden (*obligor*) shall happen to die in the lifetime of the said (*father*), THEN in either of the said cases the above written obligation shall cease and be void, or else shall be and remain in full force and virtue.

BONDS.

Post-obit.

BONDS.

*Produce deeds
(lost).*

No. CCL.

**Bond to Produce, when found, Title Deeds which have been
mislaidd (1).*

Recitals. KNOW ALL MEN, &c. (2). WHEREAS, &c. [*recital of conveyance to the obligee of even date*]. AND WHEREAS the several title deeds mentioned in the schedule hereunder written relate solely or chiefly to the hereditaments comprised in and intended to be conveyed by the said indenture, but the same are lost or mislaidd, and cannot at present be found, wherefore the said (*obligor*) has agreed to enter into the above written obligation with such condition thereto as here-
CONDITION. under is written. NOW THEREFORE THE CONDITION of the above written obligation is such, that if the said (*obligor*), his heirs, executors or administrators, shall and do use all proper endeavours to discover the indentures and writings mentioned in the schedule hereunder written, and do and shall, if when and as soon as the same or any or either of them shall be found, deliver the same whole and uncanceled unto the said (*obligee*), his heirs (3), executors, administrators or assigns; and if he the said (*obligor*), his heirs, executors or administrators, shall and do from time to time and at all times, until the same shall be so found and delivered, well and sufficiently keep harmless and indemnified all and every the hereditaments comprised in the said in part recited indenture, of, from and against all liens, charges, and incumbrances, and all entries, distresses or ejectments through or by reason of the said deeds and writings, or any or either of them, not being delivered unto the said (*ob-*

Obligation.

(1) A bond of this kind is seldom required, unless where the deeds have been known to have been recently in existence; as where they have been missing for a great length of time, they will be presumed to be wholly lost and irrecoverable; see *Proley v. Kay*, 1 P. Wms. 355.

(2) See *ante*, p. 77.

(3) If the premises to which the deeds relate be leasehold, omit the word "heirs."

ligee) at the time of the execution of the above mentioned indenture ; and the said (*obligee*), his heirs, executors, administrators and assigns, and other his and their real and personal estates, of, from and against all actions, suits, costs, charges, damages and expenses whatsoever, which shall or may be brought or commenced against him or them, or which he or they may sustain or be put unto by any person or persons whomsoever, who shall or may claim any estate, right, title or interest in, to, out of or concerning the said hereditaments or any part thereof, from, through or under the said indentures or writings, or any or either of them, for and during the period or space of twenty years, to be computed from the date of the above written obligation. THEN, &c.

BONDS.

Produce deeds
(lost).

SCHEDULE

ABOVE REFERRED TO.

BONDS.

*Prove debt
(bankruptcy).*

No. CCLI.

Bond by a Creditor to prove a Debt for the issuing a Commission of Bankrupt (1).

KNOW ALL MEN BY THESE PRESENTS, that I (*the creditor*) of, &c. am holden and firmly bounden unto the Right Hon. Lord _____, Lord High Chancellor of Great Britain, in the penal sum of £200 (2), of lawful money of the United Kingdom of Great Britain and Ireland, to be paid to his certain attorney, executors, administrators, or assigns, for which payment to be faithfully and truly made I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated this _____ day of _____, in the _____ year of the reign, &c. and in the year of our Lord _____. Now THE CONDITION of the above written obligation is such, that if the above bounden (*creditor*) do and shall, as well before the major part of the commissioners to be appointed in or by a commission of bankrupt to be issued against (*the bankrupt*) of, &c. dealer and chapman, as upon a trial at law, in case the due issuing forth of the said commission shall be contested and tried, prove that the said (*bankrupt*) is justly and duly indebted unto the said (*creditor*) in the sum of £100 and upwards, and is become bankrupt within the true intent and meaning of the several statutes made and now in force concerning bankrupts, some or one of them; and also if the said (*creditor*)

Bankruptcy bond prepared by clerk.

Penalty of bankrupt bond limited to £200.

(1) This bond is in London usually prepared by the clerk at the bankrupts' office; but, as in a country commission, it is prepared by the solicitor himself, see 2 Cooke, Ban. Law. 5, it has been thought right that a form should be here inserted.

(2) The penalty of a bond is always a sum inserted at the discretion of the parties, and varies in its amount according to the circumstances of the case; but where the bond is given for the purpose of issuing a commission of bankrupt, the penalty is limited by the 5 Geo. 2. c. 30. s. 23. to the sum of two hundred pounds.

shall cause the said commission to be executed according to the directions of the said several statutes, and particularly of an act of parliament made and passed in the fifth year of the reign of his present Majesty King George the Fourth, entitled, "An Act to amend the Laws relating to Bankrupts," THEN, &c. or else, &c.

BONDS.

Prove debt
(bankruptcy).

. Where petitioning creditors are partners, it is usual for one of them only to sign the bond, notwithstanding it purports to be their joint and several bond, and such signature has been holden to be sufficient. See *ex-parte* Hodgkinson, 1 Cooper, 99.

Signature by
one partner suf-
ficient.

And the practice is for one of them to make the affidavit of the debt, and the partner making the affidavit, alone enters into the bond to the great seal; *ex-parte* Price, 1 Buck. 457.

Affidavit.

BONDS.

*To refund a
legacy.*

No. CCLII.

Bond to refund a Legacy in case there shall prove to be a deficiency of Assets (1).

Variations where the payment is of residuary property to a presumed nearest of kin to the testator.

KNOW ALL MEN, &c. (2) WHEREAS (3) *(the testator)* late of, &c. deceased, by his last will and testament in writing, bearing date the day of last past, amongst various other legacies therein mentioned, gave and bequeathed unto the said *(legatee)* the sum of £ , to be paid to him within the space of twelve calendar months next after the decease of the said testator, and appointed the said *(executors)* executors of his said will. AND WHEREAS the said *(testator)* departed this life on or about the day of , without revoking or altering his said will so far as concerns the said legacy or sum of £ given to the said *(legatee)*, and the said *(executors)* soon after duly proved the

(1) If an executor voluntarily pay or assent to the payment of a legacy, he cannot compel the legatee to refund in case there shall prove to be a deficiency of assets; *Newman v. Barton*, 2 Ves. 194; and vide *Moore v. Moore*, ib. 600; which renders it proper that some express security should be taken by the executor for that purpose, in the event of his paying the legacy immediately upon the decease of the testator.

Obligation.
Residue.

(2) See the form of this obligation, *ante*, p. 77.

(3) If the bequest be of residuary property, say,

“ WHEREAS *(the testator)* late of, &c. deceased, by his last will and testament, in writing, bearing date the day of , which was in the year , after several bequests therein mentioned, gave and bequeathed all the rest and residue of his personal estate and effects, of what nature and kind soever, unto the *(residuary legatee)* of, &c. to and for his own use and benefit, and appointed the said *(executors)*,” &c. *as above*.

same in the prerogative court of the Archbishop of Canterbury. AND WHEREAS (1) the said (*executors*) have not yet been able fully to ascertain the amount of the debts and credits of the said (*testator*), but having reason to believe that sufficient assets may come to their hands for payment of the several legacies bequeathed by the said will, have consented to pay to the said (*legatee*) his said legacy or sum of £ , upon his entering into the above written obligation, with such condition for making void the same as hereinafter is expressed. NOW THE CONDITION (2) of the above written obli-

BONDS.

To refund a legacy.

CONDITION.

(1) If the residuary legatee be dead and the nearest of kin unheard of, say, Residue.

"AND WHEREAS the said (*residuary legatee*) departed this life in the lifetime of the said (*testator*), whereby the bequest made to him by the said (*testator*), of the residue of his estate and effects, became lapsed, and descended to the said (*nearest of kin*) as the next of kin of the said (*testator*). AND WHEREAS the said (*nearest of kin*) has not been heard of since the decease of the said (*testator*), but is supposed to have died abroad. AND WHEREAS the said (*obligor*) having made it appear to the said (*executors*) that he is the nearest of kin, as well of the said (*testator*) as of the said (*nearest of kin*) for any thing that can at present be shewn or reasonably presumed to the contrary, they have consented to pay over unto him the residue of the personal estate and effects of the said (*testator*), now remaining in their hands, upon his entering into the above written obligation," &c. *as above*.

(2) If the condition of the bond be to refund the residue in the event of the nearest of kin proving to be alive, say, Residue.

"NOW THE CONDITION of the above written obligation is such, that in case any other person or persons than the said (*obligor*) shall prove him, her, or themselves, to be the nearest of kin to the said (*testator*) deceased, or the said (*nearest of kin*) or as his devisee, legatee, or other lawful representative, and as such lawfully entitled to the whole or any part of the said residue of the personal estate and effects of the said (*testator*) deceased, so now remaining in the hands of the said (*executors*) as aforesaid, then if the above bounden (*obligor*), his heirs, executors, or administrators, do and shall, within six calendar months next after notice shall have been given to him or them thereof, well and truly refund and repay unto the said (*executors*), or the survivor of them, or the executors or administrators of the survivor, the whole, or so much and such part of the said residue of the personal estate and effects of the said (*testator*), as shall

BONDS.

To refund a
legacy.

tion is such, that if the above bounden (*legatee*), his heirs, executors, or administrators, within the space of days next after notice shall have been given to him or them, under the hands or hand of the said (*executors*), or of the survivor of them, or of the executors or administrators of the survivor, that the personal estate of the said (*testator*) has proved insufficient to pay his just debts and funeral expenses, and the necessary charges of the said executorship, together with the several other legacies given by his said will, do and shall well and truly repay, or cause to be repaid to them the said (*executors*), or the survivor of them, or the executors or administrators of the survivor, or such person or persons as they or he shall direct in that behalf, the whole or such rateable proportion of the said legacy or sum of £ , as in such notice shall be expressed; and also do and shall from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said (*executors*) and every of them, their and each of their executors or administrators, of, from, and against all costs, charges, damages, and expenses which they, or any, or either of them shall pay, or become liable to pay, or be put unto for or by reason of their or his having paid the said legacy or sum of £ to the said (*legatee*) as hereinbefore is mentioned, or of any matter, cause, or thing, relating thereto. THEN, &c.

be so justly due and payable to the person or persons so proving him, her, or themselves, to be such next of kin, devisee, legatee, or other lawful representative as aforesaid, together with lawful interest for the same after the rate of five per cent. per annum in the mean time, and do and shall from time to time, and at all times hereafter, save, defend," &c. *as above*.

BONDS.

Re-pay
(purchase-mo-
ney).

No. CCLIII.

Bond by an Attorney signing a purchase deed in the name of his Principal, to return the purchase-money if the Principal be not alive at the time of signing (1).

KNOW ALL MEN, &c. WHEREAS by articles of agreement entered into the day of last past, between the (*vendor*) of, &c. of the one part, and the said (*purchaser*) of the other part, the said (*vendor*) contracted with the said (*purchaser*) for the absolute sale to him of certain freehold messuages, lands and hereditaments therein particularly described, at or for the price or sum of £ .

AND WHEREAS the said (*vendor*) by deed-poll under his hand and seal bearing date the day of last past, deputed and appointed the said (*attorney*) his lawful attorney, to receive from the said (*purchaser*), his heirs or assigns, the said purchase-money or sum of £ , and on receipt thereof to execute all such deeds and assurances as should be necessary for vesting the said hereditaments and premises in the said (*purchaser*), his heirs and assigns. AND WHEREAS the said (*vendor*) is now resident abroad beyond the seas, (that is to say) in the city of or elsewhere, in the kingdom of .

AND WHEREAS in pursuance of the said authority so given to him as hereinbefore is mentioned, the said (*attorney*) hath this day received the said sum of £ , and hath executed as and for the said (*vendor*) certain indentures of lease and release, the lease bearing date the day next before the date of the release, and the release bearing or intended to bear even date

(1) As the execution of a deed by an agent on behalf of a vendor, &c. will be void, unless the principal was alive at the time, the purchase-money is sometimes vested in the Funds, or on other security, in the name of the purchaser and a trustee, accompanied by a suitable declaration of trust for paying the money over on proof of the principal being alive on the execution of the deed by his attorney; but as a bond is frequently considered sufficient, a form is here introduced.

Power of attorney void on death of principal.

BONDS.

Re-pay
(*purchase-mo-*
ney).

CONDITION.

with the above written obligation, whereby the said lands and hereditaments are expressed to be conveyed unto the said (*purchaser*) and his heirs, in the manner therein mentioned. AND WHEREAS by reason of the possibility that the said (*vendor*) may happen to have departed this life previously to the time of the execution of the said indenture by the said (*attorney*), and the authority so delegated to him as aforesaid thereby become void; the said (*attorney*) hath agreed to enter into the above written obligation with such defeasance in respect thereof as is hereunder written. NOW THE CONDITION of the above written obligation is such, that if the said (*vendor*) was living at the time of the execution of the said in part recited indentures of lease and release, and of signing the receipt thereupon indorsed for the said sum of £ by the said (*attorney*), as the attorney of and for him the said (*vendor*) in that behalf; and if the said in part recited power or authority was at the time of such execution of the said indenture valid and in force, for the purpose of authorising him the said (*attorney*) to execute the said indenture, and to receive and give a good discharge for the said sum; AND if the said (*vendor*) had departed this life before the execution of the said indenture by the said (*attorney*), or the said power or authority was by any other means become invalid or insufficient for any or either of the purposes aforesaid, then if he the said (*vendor*), or, in case of his decease, if such person or persons as for the time being shall be his heir or heirs at law, shall and do, within the space of one calendar month next after demand shall be made to him or them for that purpose by the said (*purchaser*), his heirs or assigns, well and duly execute the said in part recited indenture; AND in case the said (*vendor*), his executors and administrators, do and shall sign and give a good and sufficient receipt or acquittance for the sum of £ , or otherwise ratify, confirm and effectuate the purport and true intent and meaning of the said indenture in all things; and in default thereof, if he the said (*attorney*), or he the said (*vendor*), his executors and administrators, or any or either of them, do and shall, upon demand, pay unto the said (*purchaser*), his executors, administrators or assigns, the said sum of £ , with interest for the same, after the rate of £5 per cent. per annum; and in the mean time, and until the same shall be so duly signed, sealed, delivered and executed, do and shall well and effectually protect, save harmless and keep indemnified the said (*purchaser*), his heirs, executors, administrators and assigns, and his and their goods and chattels, and lands and tenements, of, from and against all claims and demands whatsoever, from or by the said (*vendor*), his

heirs, executors, administrators or assigns, relative to or concerning the same hereditaments and premises, and of, from and against the payment to, or any misapplication by the said (*attorney*) of the said sum of £ , and all costs, charges, damages and expenses whatsoever, relative to or concerning all or any of the matters or things whatsoever. THEN, &c.

BONDS.

Re-pay
(purchase-money).

BONDS.

Respondentia.

No. CCLIV.

A Respondentia Bond (1).

KNOW ALL MEN, &c. [*usual form as in other cases.*] WHEREAS the above named (*obligee*) hath, on the day of the date of the above written obligation, advanced and lent unto the above bounden (*obligor*) the sum of £ upon goods, merchandize and effects, laden or to be laden on board the ship or vessel called the , of the burthen of tons, now at anchor in the River Thames, outward bound to (2), whereof is master, and which said sum is to rate at respondentia on the said goods. Now

CONDITION. THE CONDITION of the above written obligation is such, that if the said ship or vessel do and shall, with all convenient speed, proceed and sail from and out of the said River Thames on a voyage to , or any other port or ports, place or places in the East Indies, China or elsewhere beyond the Cape of Good Hope, and from thence return to the said River Thames, at or before the expiration of thirty-six calendar months from the date of the above

Distinction between bottomry and respondentia bonds.

Sum lent on respondentia, not to exceed the value of goods on board, if bound to or from India.

(1) Respondentia is where money is borrowed not on the vessel itself, as in the case of bottomry, but upon the goods and merchandize contained in it, and for which the person of the borrower only is liable; see *Busk v. Fearon*, 4 East, 319. The chief difference between bottomry and respondentia is, that in a loan on bottomry the lender runs no risk though the goods be lost; and in respondentia he must be paid both his principal and interest though the ship perish, provided the goods be safe; see *ante*, p. 94, in notes.

(2) If the vessel be about to proceed on a voyage to India, care must be taken that the money taken up at Respondentia do not exceed the value of the goods actually on board the ship, as the 19 Geo. 2. c. 37. s. 5. enacts, that all monies lent on bottomry or respondentia, on vessels bound to and from India, shall be lent only upon the ship or upon the merchandize, to be so expressed in the condition of the bond that the lender shall have the benefit of salvage, and that if the borrower have not effects on board to the value of the sum borrowed, he shall be responsible to the lender for so much of the principal as shall not be laid out, with legal interest and all other charges, though the ship and merchandize be totally lost; and see *ut supra*.

written obligation, and there end her intended voyage, and that without deviation, the dangers and casualties of the seas only excepted; and if the above bounden (*obligor*), his heirs, executors or administrators, do and shall within the space of days next after the arrival of the said ship or vessel in the said River Thames, or at the end and expiration of the said term of thirty-six calendar months, to be accounted as aforesaid, which of the said terms shall first or next happen, well and truly pay or cause to be paid to the said (*obligee*), his executors, administrators and assigns, the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, together with the sum of £ of like lawful and current money for every calendar month the said ship shall be out on the said voyage over and above twenty calendar months, and so in proportion for less time than a month; or if in the said voyage, and within the said thirty-six calendar months, to be accounted as aforesaid, an utter loss of ship or vessel, by fire, enemies, pirates or any other casualty shall unavoidably happen, and the above bounden (*obligor*), his heirs, executors or administrators, do and shall, within the space of six calendar months next after such loss, well and truly account for, upon oath if required, and pay and satisfy to the said (*obligee*), his executors, administrators and assigns, a just and proportionable average on all goods, merchandize and effects of the said (*obligor*) carried out from England on board the said ship or vessel, and the net proceeds thereof, and on all other goods, merchandize and effects which the said (*obligor*) shall or may acquire during the said voyage, and which shall not be unavoidably lost. THEN, &c.

NOTES.Respondentia.

BONDS.

Resignation.

No. CCLV.

Bond to resign a Living on request (1).

KNOW ALL MEN, &c. [*usual form as in other cases.*] WHEREAS the above named (*obligee*), by deed-poll under his hand and seal, bearing even date with the above written obligation, hath presented the said (*obligor*) to the vicarage and parish church of in the county of . AND WHEREAS previously to the said presentation, it was agreed that the said (*obligor*) should resign and relinquish the said living unto the said (*obligee*), in order to enable the said (*obligee*) to present one of his sons thereto when of a sufficient age to hold the same, and should enter into the above written obligation for the due performance of the said agreement, with such condition for making void the same as hereinafter is expressed.

General bonds
of resignation
void.

(1) Bonds for resignation generally, and without any cause expressed, were formerly holden to be good, because no motive being alleged, the law would not presume it to be a corrupt one; see *Hilliard v. Stapleton*, 1 Eq. Ab. 87. pl. 3; *Steeper v. Carver*, 2 Eq. Ab. 183. p. 1; *Turner v. Hawkins*, *Fortesc.* 351; *Peele v. Earl of Carlisle*, 1 *Stra.* 227; *Peele v. Capell*, *ib.* 534. But on an appeal to the House of Lords, in the case of the *Bishop of London v. Fytche*, 1 *Brow. Ch. Ca.* 96. from a determination in that case in the Court of King's Bench conformably to those authorities, see 1 *East*, 487. such bonds were adjudged to be void; 2 *Brow. C. P.* 211; it is now proper, therefore, that the cause of resignation should be expressed (see observations of *Buller, Justice*, 1 *East*, 494), which if it be with a view to present a son or nephew of the patron, when of age, has been holden at law to be good; see 1 *East*, 494. and *Dashwood v. Peyton*, 18 *Ves.* 37; but in the case last cited great doubt was expressed by *Eldon, Ch. J.* as to any essential distinction between general and particular bonds of resignation, with reference to the principle upon which the House of Lords decided in the case of the *Bishop of London v. Fytche*; and see also *Lord Kircudbright v. Lady Kircudbright*, 8 *Ves.* 51. 61. The efficacy of such bonds, therefore, after all, remains doubtful, and they should never be entered into without the advice of counsel taken upon the particular circumstances of each case.

NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*) shall be duly instituted and inducted to the said vicarage or parish church of _____ in pursuance of the aforesaid presentation, and do and shall at the request in writing, and the proper costs, charges and expense of the said (*obligee*), his heirs, executors or administrators, absolutely quit, resign, relinquish, surrender and yield up unto him the said (*obligee*) or his heirs, the said vicarage or parish church of _____ with all its rights, members and appurtenances, and all the estate, right, title and interest, property, claim and demand whatsoever, both at law and in equity, of him the said (*obligor*), of, in or to the same, in order and to the intent that he the said (*obligee*) or his heirs, shall or may present any such son of him the said (*obligee*) as may be then of age and fit to perform the cure of the said vicarage or parish church. THEN, &c.

NOTE.Resignation.

BONDS.

Return pre-
mium
(apprentice).

No. CCLVI.

**Bond to return a part of the Premium given with Apprentice, if he die within a given period.*

KNOW ALL MEN, &c. (1). WHEREAS by indentures of apprenticeship bearing date on or about the day of now last past, [or even date with the above written obligation] the said (*obligee*) bound his son (*name*) apprentice unto the above bounden (*obligor*) for the term of years, and paid to the said (*obligor*) the sum of £ by way of premium with the said apprentice. AND WHEREAS upon the contract for the binding of the said apprentice it was agreed between the said (*obligor*) and (*obligee*), that if the said (*apprentice*) should happen to depart this life within the first years of the term of his said apprenticeship, the said (*obligor*) should return and pay back such part or proportion of the said sum of £ as hereinafter is mentioned. NOW THE CONDITION of the above written obligation is such, that if the said (*apprentice*) shall happen to depart this life at any time before the expiration of the first years of the said term of years, to be accounted from the day of the date of the said indenture of apprenticeship, and the said (*obligor*), his heirs, executors or administrators, do and shall, within the space or period of one calendar month next after such decease of the said (*apprentice*), well and truly return and pay, or cause to be returned and paid, unto the said (*obligee*), his executors, administrators or assigns, the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, as or for part of the said premium or sum of £ , and in case the said (*apprentice*) shall happen to depart this life after the expiration of the said first years of the said term of his apprenticeship, but be-

fore the expiration of the year thereof, and the said (*obligor*), his executors or administrators, do and shall in such case well and truly return and pay, or cause to be returned and paid, within the like space or period after the decease of the said (*apprentice*), unto the said (*obligee*), his executors, administrators or assigns, the sum of £ of such lawful money as aforesaid, as or for part of the said premium or sum of £ . THEN, &c.

BONDS.Return pre-
mium
(apprentice).

BONDS.

Registry (ship).

No. CCLVII.

** A Bond from the Master or Owner of a Ship or Vessel to the King on its being Registered (1).*

TO ALL TO WHOM, &c. WHEREAS (*master*) of, &c. being master of the ship or vessel called of tons burthen, and now belonging to the port of , and (*owner*) of, &c. owner of the said ship or vessel, have duly registered the said ship and obtained a certificate thereof as required by act of Parliament. Now THE CONDITION of the said obligation is such, that if the said certificate shall not be sold, lent or otherwise disposed of to any person or persons whatsoever, and if the same shall be solely made use of for the service of the said ship or vessel, and in case such ship or vessel shall be lost or taken by the enemy, burnt or broken up, or otherwise prevented from returning to the port to which she belongs as aforesaid, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall

6 Geo. 4. c. 110.

(1) By the act of 6 Geo. 4. cap. 110. it is enacted, that no ship or vessel shall be entitled to any of the privileges of a British registry ship until those who may claim property therein shall cause it to be registered in the manner mentioned in that act, and shall have obtained a proper certificate of such registry; and that upon obtaining the certificate of such registry, sufficient security by bond shall be given to his Majesty, his heirs and successors, by the master, and such of the owners who shall attend, as in the act is required, if such ship or vessel shall be a decked vessel, or be above the burthen of 15 tons and not exceeding 50 tons, in the penalty of £100; if exceeding the burthen of 50 tons and not exceeding 100 tons, in the penalty of £300; if exceeding the burthen of 100 tons, and not exceeding 200 tons, in the penalty of £500; if exceeding the burthen of 200 tons and not exceeding 300 tons, in the penalty of £800; and if exceeding the burthen of 300, in the penalty of £1000; see the certificate, *post.* p. 245.

BONDS.

Registry (ship).

have been sold to the Crown, or shall under any circumstances have been registered *de novo*, Then and in either of the said cases, if the said certificate (the same being preserved) shall be delivered up within one month after the arrival of the master for the time being of the said ship or vessel, in any port or place in his Majesty's dominions, to the collector and comptroller of some port in Great Britain, or of the Isle of Man, or of the British Plantations, or to the governor, lieutenant-governor or commander-in-chief for the time being of the Islands of Guernsey or Jersey. AND if any foreigner, or any person or persons for his use and benefit, shall purchase or otherwise become entitled to the whole or any part or share of, or any interest in such ship or vessel, and the same shall be within the limits of any part of Great Britain, Guernsey, Jersey, Man or the British colonies, plantations, islands or territories aforesaid, then and in such case if the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the person or persons authorized to make registry, and grant certificate of registry at such port or place respectively as by act of Parliament is required; and if such ship or vessel shall be in any foreign port when such purchase or transfer of interest or property shall take place, then if the same shall be delivered up to the British Consul or other chief British officer resident at or nearest to such foreign port, or if such ship or vessel shall be at sea when such purchase or transfer of interest or property shall take place, then if the same shall be delivered up to the British Consul or other chief British officer at the foreign port or place in or at which the master or other person having or taking the charge or command of such ship or vessel shall first arrive after such purchase or transfer of property at sea, immediately after his arrival at such foreign port, but if the master or other person who had the command of the said ship or vessel at the time of such purchase or transfer of property at sea shall not arrive at a foreign port, but shall arrive at some port of Great Britain, Guernsey, Jersey, Man, or his Majesty's said colonies, plantations, islands or territories, then if the same shall be delivered up in manner aforesaid, within fourteen days after the arrival of the said ship or vessel, or of the person who had the command thereof, in any port of Great Britain, Guernsey, Jersey, Man or any of his Majesty's said colonies, plantations, islands or territories. THEN, &c. or otherwise, &c.

*. * Sec. 21. of the act provides, that if the ship at the time of the 6 Geo. 4.

BONDS.Registry (ship).

registry be at any other port than that of registry, the master may there give the bond.

Sec. 22. That if the master be changed, the new master shall give a similar bond, whose name shall be indorsed on the certificate of registry.

And sec. 26. That if the certificate of registry be lost or mislaid, a registry *de novo* may be made, the owner and master previously giving a bond to the commissioners of customs, with a condition, "that if the certificate of registry be at any time afterwards found, the same shall be forthwith delivered to the proper officer of his Majesty's customs to be cancelled, and that no illegal use has been or shall be made thereof with his or their privity or knowledge."

BONDS.

Title, &c.
(copyholds).

No. CCLVIII.

Bond for the Title and quiet Enjoyment (1) of Freehold.

Variations where of Copyhold Premises. Where Leasehold. Where the surrender is by way of Mortgage.

KNOW ALL MEN, &c. (2). WHEREAS the above bounden (*obligor*) hath contracted with the said (*obligee*) for the sale of certain (*if copyholds add*) lands and hereditaments, situated at _____, holden of the manor of _____ for the sum of £ _____, and on the day of the date of the above written obligation, hath surrendered the said hereditaments into the hands of the lord of the manor, according to the custom of the said manor, to the use and behoof of him the said (*obligee*), his heirs and assigns for ever, [*or if leaseholds, executors, administrators and assigns,*] [to be holden at the will of the lord, according to the custom of the said manor] free from incumbrances, except only the customary rents and services incident thereto (3) as by the said indenture [*or surrender*]

(1) A bond of this kind may be given instead of the usual covenants in the deed of conveyance, in order that the suspicion of the supposed defect may not appear upon the face of the title, and that whether the premises be freehold or leasehold; and if they be copyhold it may be used instead of the usual covenants for the title when the surrender has been made previously to or at the time of the completion of the purchase, and the expense of a deed of covenants is wished to be avoided.

When bond proper.

(2) See form of obligation, *ante*, p. 77.

(3) If the surrender was by way of mortgage, add,

Obligation.

Mortgage.

"Subject nevertheless to a proviso or condition for making void the same upon payment by the said (*obligor*) to the said (*obligee*) of the sum of £ _____ with interest, at the time and in the manner therein mentioned."

BONDS.

Title, &c.
(copyholds).

CONDITION.

reference being had thereto will more fully appear. AND WHEREAS, upon the treaty for the said purchase, it was agreed that the said (*obligor*) should enter into a bond or obligation in writing for the title and quiet enjoyment of the said (*obligee*), in the manner herein-after expressed. NOW THE CONDITION of the above written obligation is such, that if the said (*obligor*) [(1) for or notwithstanding any act, deed, matter, or thing whatsoever, at any time made, done, executed, occasioned, suffered, or omitted by him, or any of his ancestors to the contrary,] is and was at the time of the said surrender and of the sealing and delivery of the above written obligation lawfully, rightly, and absolutely seised in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore mentioned to be surrendered, as of, in, or for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee simple, in possession, and in severalty, [*if copyhold* add, at the will of the lord, according to the custom of the said manor of] without any manner of trust, condition, power of revocation, or of limiting any new or other use or uses or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may determine, abridge, qualify, alter, charge, encumber, or prejudicially affect the same estate in any manner howsoever (the land tax and sewers rate, if any, [and the customary rents and services payable, or to be performed for or in respect of the same premises] only excepted), and had full power and lawful and absolute right and title to release, convey, or assign, *or* surrender and assure the same hereditaments and premises to the use and behoof of the said (*purchaser*), his heirs, *or* executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of the said in part recited indenture *or* surrender. AND if the said (*obligee*), his heirs, *or* executors, administrators, and assigns, shall or lawfully may [be admitted unto, and] at all times thereafter hold, possess, and enjoy all and singular the said hereditaments and premises, with their and every of their respective rights, privileges, appendages, and appurtenances, and receive and

Mortgage, &c.

(1) Where the bond is given as an indemnity against any supposed latent defect arising far back in the title, the words within brackets should be omitted; so also if the bond be given to a mortgagee, or the premises be copyhold.

Leaseholds.

Where the premises are leasehold, make the covenants to correspond with the usual form of leasehold covenants, as, *ante*, MOD. PREC. Vol. III. third edit.

retain the rents, issues, profits, and proceeds, which shall arise or be payable for or in respect of the same, from and after the day of now last past, for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*obligor*), or his heirs, or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the same premises, or any part thereof, [from, through, under, or in trust for him or them, or any of the ancestors of the said (*obligor*)] and that free and clear, and clearly and absolutely discharged and exonerated or, otherwise by and at the expense of the said (*obligor*); his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all former and other surrenders, gifts, grants, mortgages, estates, rights, titles, interests, charges, and incumbrances whatsoever, [(1) which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, occasioned, or suffered by the said (*obligor*) or any of his ancestors, or any other person or persons, now or hereafter rightfully claiming, or having title to claim from, through, under, or in trust for him, them, or any of them, or by or through his, their, or any of their procurement or privity (except as aforesaid)]. AND MOREOVER if he the said (*obligor*) and his heirs, and all and every other persons or person, now or at any time hereafter rightfully claiming, or having title to claim any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, or any of the ancestors of the said (*obligor*), and shall and do, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*obligee*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all convenient and proper despatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, surrenders, admittances, assurances, matters and things in the law whatsoever, by, or [whether become necessary or expedient by reason of any act, omission, or default of him the said (*obligor*) or his ancestors, or of the steward, or homage, or lord or lords of the said manor,] for the further and bet-

BONDS.

Title, &c.
(copyholds).

(1) See *supra*, p. 222. n. (1).

BONDS.Title, &c.
(copyholds).

ter or more satisfactorily [surrendering,] conveying, confirming, and assuring the same hereditaments and premises, or any part thereof, with their and every of their respective rights, privileges, members, appendages, and appurtenances, unto and to the use of him the said (*obligee*) and his heirs, to be holden [according to the tenor and true intent and meaning of the said surrender] as he the said (*obligee*), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister), shall lawfully and reasonably require or advise, [(1) so that such further assurance or assurances, - or any of them, do not contain, nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances, be not obliged for the making or executing the same, to go out of or further than the manor or manors whereof the hereditaments so to be further assured are or shall be holden, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses.] (2) THEN, &c. or else, &c.

Mortgage.

(1) If the surrender be by way of mortgage, the part of this covenant which is bracketed is usually omitted, as indeed it may in every other case, the saving which it contains being no other than what is prescribed by the rules of law and of practice.

Mortgage.

(2) If the surrender was by way of mortgage, the proviso for redemption may be added,

“And also if the said (*mortgagors*) or either of them, their or either of their heirs, executors, and administrators, shall and do well and truly pay or cause to be paid unto the said (*mortgagee*) or his executors, administrators, or assigns, the said sum of £ and interest as aforesaid, on such day and time as in the aforesaid surrender is expressed, limited, or appointed for payment thereof, according to the true intent and meaning of the proviso or condition in the same surrender contained or mentioned.”

BONDS.

Title, &c.

No. CCLIX.

*Bond for Quiet Enjoyment (1) from a Vendor to a Purchaser
where doubts subsist respecting the Title.*

KNOW ALL MEN, &c. (2). WHEREAS the said (*obligor*) hath contracted with the said (*obligee*) for the purchase of certain lands and hereditaments, situated at _____ in the county of _____, for the sum of £ _____, and by indenture of feoffment [*or as the case may be*] bearing or intended to bear even date with the above written obligation, and made or intended to be made between the said (*obligor*) of the one part, and the said (*obligee*) of the other part, and livery of seisin made in pursuance thereof, the same hereditaments have, in consideration of the said sum, been conveyed and assured unto and to the use of the said (*obligee*), his heirs and assigns for ever, as by reference to the said indenture will more fully appear. AND WHEREAS some doubts have been entertained concerning the perfect indefeasibleness of the title of the said (*obligor*) to the said hereditaments, in respect of a certain legal estate or interest which is supposed to be outstanding for the now residue of a term of _____ years, created by an indenture of demise bearing date the _____ day of _____ which was in the year _____, and made between, &c. (3) wherefore the said (*obligor*) hath agreed to enter into the above written obligation for indemnifying the said (*obligee*) against all claims, damages and costs which may be made or incurred in respect of any such outstanding estate or interest, with such condition for making void the same as hereinafter is expressed. Now CONDITION. THE CONDITION of the above written obligation is such, that if and when the above bounden (*obligor*) or his heirs do and shall fully and satisfactorily obviate and remove the said objection or defect

(1) If the bond be made to extend to title as well as to quiet enjoyment, see *ante*, No. CCLVIII., p. 221. Title.

(2) See form of obligation, *ante*, p. 77. Obligation.

(3) Where the bond has reference to some known defect it should be mentioned in the recitals or the condition; see *Nash v. Palmer*, 5 Maule and Selw. p. 374.

BOND.**Title, &c.**

hereinbefore recited or referred to, and do and shall from time to time, and at all times hereafter, in the mean time protect and save harmless, or otherwise fully and sufficiently indemnify the said (*obligee*), his heirs, executors, administrators and assigns, from and against all costs, charges, damages and expenses to be incurred by reason or means of any lawful or rightful claim or demand, or estate, right, title or interest of any person or persons whomsoever, in, to or concerning the said messuages, &c. so expressed or intended to be conveyed or assured to him the said (*obligee*) and his heirs, in or by the said in part recited indentures of lease and release, so and in such manner that he the said (*obligee*), his heirs and assigns, shall or lawfully may, from time to time and at all times hereafter, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the same hereditaments and premises, with their and every of their rights, members, appendages and appurtenances, and receive and retain the rents, issues and profits thereof, for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim or demand whatsoever, by or from the said (*obligor*) or his heirs, or any other person or persons whomsoever (1), and according to the tenor and true intent and meaning of the said in part recited indentures, and more especially of, from and against, &c. (2). THEN, &c.

Qualification of the condition.

(1) If the supposed incumbrance or defect be a remote and latent one, the condition of the bond should be for quiet enjoyment against all persons whomsoever; but if it arise from some act of the vendor himself, or of his immediate ancestors, it may be qualified by the addition of

“Any person or persons now or hereafter lawfully, equitably and rightfully claiming or possessing any estate, right, title, charge or interest, at law or in equity, in, to, out of, upon or concerning the said hereditaments and premises, or any of them, or any part thereof, from, through, under or in trust for him, them or any of them, or any of the ancestors of the said (*vendor*).”

Restriction of condition.

If, for the reason mentioned above, the condition of the bond is to be restrained to the acts of the vendor, and those claiming under him, add,

“By the said (*vendor*) or any of his ancestors, or by any person or persons rightfully claiming or possessing any estate, right, title or interest, at law or in equity, from, through, under or in trust for him, them or any of them, or by or through his, their or any of their procurement, consent, privity, acts, means or default.”

(2) See *ante*, p. 225. n. (3).

BONDS.

Recovery
(suffer).

No. CCLX.

**Bond for an issue in tail to suffer a Recovery to the use of a Purchaser or Mortgagee when of age.*

Variations where the bond is for levying a fine.

KNOW ALL MEN BY THESE PRESENTS, &c. (1). WHEREAS the said (*obligee*) hath purchased of the above bounden (*obligor*) the fee-simple and inheritance of certain lands and hereditaments situated at whereof the said (*obligor*) is tenant for life, but with remainder to his son in tail, who is now of the age of or thereabouts, and by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with the above written obligation, has granted and released, or otherwise assured the same unto the said (*obligee*) and his heirs accordingly. AND WHEREAS it was agreed on the contract for the said purchase, that the said (*obligor*) should enter into a bond for the confirmation of the said purchase, and suffering a common recovery of the said premises by the said upon his attaining the age of twenty-one years. Now THE CONDITION of the above written obligation is CONDITION. such, that if the said (*son*) do and shall attain the age of twenty-one years, and do and shall, within the space of calendar months next thereafter, at his own costs and charges; or the costs and charges of him the said (*obligor*), his heirs, executors or administrators, make, do and execute all such acts, deeds, matters and things, and conveyances and assurances in the law whatsoever, whether by feoffment, confirmation, fine, common recovery, warranty or otherwise, as the counsel in the law of the said (*obligee*), his heirs or assigns, shall advise and require, for effectually barring and destroying the estate tail, or other estate or interest of him the said (*son*), and all the remainders and reversions expectant or dependent there-

(1) See form of obligation, *ante*, p. 77.

Obligation.

BOWER.

Recovery
(*tufter*).

upon, of or in the said hereditaments and premises, and for conveying and assuring the same, and the inheritance thereof in fee-simple, unto and to the use of the said (*obligee*), his heirs and assigns, or as he or they shall direct in that behalf, free from all charges, liens, estates, interests and incumbrances whatsoever created or occasioned by him the said (*son*), or any person or persons claiming by, from, through or under him; and in default thereof, if he the said (*obligor*), his heirs, executors and administrators, shall and do, at and upon the expiration of the said term or period of calendar months, well and truly pay, or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, the full sum of £ as or for and in lieu of such confirmation, conveyance or assurance. THEN, &c.

BONDS.

Trade
(a certain).

No. CCLXI.

*Bond not to carry on a certain Trade within a given distance (1).

KNOW ALL MEN, &c. (2). WHEREAS, &c. [*recite the circumstances leading to the bond being entered into.*] NOW THERE-
FORE THE CONDITION of the above written obligation is such, that if
the said (*obligor*) do not, either directly or indirectly, at any time
hereafter within the space of years, to be computed from the
day of the date of the said obligation, open any shop or warehouse
within the said city of , or within the space or distance of
miles thereof, or in anywise set up, use, exercise or carry on the
trade, art or business of , or buy, sell or otherwise deal
therein, or the articles of the said trade or business for his own profit,
emolument or advantage, without the approbation or consent of him
the said (*obligee*), his executors, administrators or assigns, in writing
under his or their hand or hands first had and obtained for that
purpose. THEN, &c.

(1) A bond or other restriction against carrying on a trade within any
limited distance or place, is good, even if it be the business of a sur-
geon, *Haywood v. Young*, 2 Chit. K. B. 181., although a general re-
striction against exercising a trade would not be; see *Michell v. Rey-*
nolds, 1 P. Wms. 181., *ante*, MOD. PREC. Vol. VI. 3d Ed. p. 229. n. (1).

(2) See *ante*, p. 77.

Obligation.

BONDS.Transfer stock.

No. CCLXII.

Bond to Transfer to the Obligee Bank Annuities lent to the Obligor (1).

Variations where the property to be transferred consists of South Sea Annuities or East India or Bank Stock.

KNOW ALL MEN, &c. (2). WHEREAS the said (*obligor*) (3) hath applied to the said (*obligee*) for the loan to him of the sum of £ , but it not being convenient for him to advance the same otherwise than by the sale of £ (4) three per cent. Con-

Reservation of
interest equal to
dividends not
usurious.

(1) A contract to replace stock, with interest in the mean time equal to the dividends, will be good, although such interest should exceed five per cent. on the money produced by the sale; *Gardner v. Pullen and Phillips*, 2 Vern. 394.; but such a contract for the debtor to repay the debt, or at the option of the creditor to transfer so much stock as the sum lent will produce on the day appointed for payment, with legal interest in the mean time, will be void as usurious, the principal and interest being secured with the further benefit of the chance of the rise of stock; *Barnard v. Young*, 17 Ves. 44.

Obligation.
Stock sold out
by obligee.

(2) See form of obligation, *ante*, p. 77.

(3) If the stock be sold out by the obligee himself, and the produce paid to the obligor, say,

“WHEREAS the said (*obligee*), at the request of the said (*obligor*), hath this day sold out the sum of £ three per cent. Consolidated Bank Annuities [*or as the case may be*] and paid the money arising from such sale unto the said (*obligor*). Now THE CONDITION,” &c. *as above*.

East India stock.

(4) If the money lent be East India stock, say,

“The sum of £ in the capital stock of the English company of merchants trading to the East Indies.”

Bank Stock.

If Bank Stock, say,

“The sum of £ present capital Bank Stock or share in the fund of the Governor and Company of the Bank of England.”

South Sea Annuities.

If South Sea Annuities, say,

“The sum of £ share or interest in the joint stock of new South Sea Annuities.”

solidated Bank Annuities, the said (*obligor*) hath agreed to accept of such Annuities in lieu of the said sum (being the computed value of the said Annuities according to the present market price thereof), and the said (*obligee*) hath accordingly transferred the said sum of £ three per cent. Consolidated Bank Annuities into the name of the said (*obligor*) in the books of the Governor and Company of the Bank of England, as the said (*obligor*) doth hereby acknowledge; and for securing the re-transfer of the said sum, the said (*obligor*) hath agreed to execute the above written obligation, with such condition for making void the same as hereinafter is expressed. NOW THE CONDITION of the above written obligation is such, that if the above bounden (*obligor*) (1), his heirs, executors or administrators, or any person or persons on his or their behalf, do and shall, on or before the day (2) of next ensuing the date of these presents, transfer or cause to be transferred (3) £ three per cent. Consolidated Bank Annuities in the books of the Governor and Company of the Bank of England in the name or names and for the proper use and benefit of the said (*obligee*), his executors, administrators, or assigns, or unto such

NOTES.
Transfer stock.

CONDITION.

(1) If there be two or more obligors, see *ante*, p. 73.

(2) If failure be made in replacing the stock on the day mentioned in the condition, and an action be brought upon the bond, the measure of damages will be the price on the day when it ought to have been replaced, or the price on the day of trial, at the option of the obligee; see *Mac Arthur v. Lord Seaforth*, 2 Taunt. 257.

(3) If the condition of the bond be to replace South Sea Annuities, say,

“Purchase and transfer, or cause to be purchased and transferred, in the books of the Governor and Company of Merchants of Great Britain trading to the South Seas £ share or interest in the joint stock of new South Sea Annuities into the name,” &c. *as above*.

Two obligors.
Damages.

South Sea Annuities.

Bank Stock.

If Bank Stock, say,
“Transferred in the books of the Governor and Company of the Bank of England £ like capital Bank Stock or share as aforesaid in the fund of the said Governor and Company into the name,” &c. *as above*.

If East India Stock, say,
“£ of and in the capital stock of the said Company of Merchants trading to the East Indies into the name,” &c. *as above*.

East India Stock.

BONDS.Transfer stock.

other person or persons as he or they shall in writing under his or their hand or respective hands direct in that behalf; and do and shall in the mean time, and until such transfer shall be made and perfected, well and truly pay, or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, at or in the Inner Temple Hall, between the hours of ten and twelve o'clock in the forenoon, such sum and sums of money of the United Kingdom of Great Britain and Ireland, of English value and currency, as he the said (*obligee*) would have been entitled to receive as and for the dividends, annual and other growing proceeds of the said £ three per cent. Consolidated Bank Annuities in case the same had continued in his or their name or names, and at such time and times, and in such manner as the said dividends and proceeds shall from time to time be payable, without any deduction or abatement whatsoever, save only the amount of the present or any future tax upon income or property, if any payable in respect thereof. THEN, &c.

Stamp.

* * * The *ad-valorem* duty on this bond must be reckoned on the value of the stock on the day of the date, or on either of the ten days preceding; see Sched. 55 Geo. 3 *post*, VOL. III. "STAMP."

CERTIFICATE.

Baptism.

No. CCLXIII.

**A Certificate or Verification by a Notary Public (1), of a Baptism.*

I (*notary*) of, &c. notary public, &c. Do hereby certify and attest unto all whom it may concern, THAT (*clerk*), by whom the annexed certificate of baptism is written and signed, is clerk of the parish church of _____, in the _____ of _____, and that he wrote and signed the same in my presence, and to whose certificate, in his quality of clerk as aforesaid, full faith and credit is given in Court and thereout. AND I DO FURTHER CERTIFY, that I have seen and examined the register of baptism in the book kept in the vestry of the church from whence the same was extracted by the said parish clerk, and found that the said certificate contained a true and faithful copy thereof. IN TESTIMONY, &c.

(1) The above certificate is inserted merely to give to the student an idea of the form of a Notary Public's certificate, as such certificates are wanted in numerous instances; but of which, forms are either ready printed for use, or well known to practitioners in that department.

As to the usual certificates of baptisms, burials, &c. see *post*. "DEPOSITION."

CERTIFICATES.Contract.

No. CCLXIV.

**A Certificate by the Surveyor General of his Majesty's Land Revenue, of a Contract for the sale of Fee-farm Rent (1).*

THESE ARE TO CERTIFY, that (*the surveyor-general*) hath contracted and agreed with A. B. for the sale to him, her, [*or them, as the case may be*] of all that rent of £ , issuing and payable out of [*briefly describing the lands or hereditaments chargeable*], now or late payable by , at or for the price or sum of £ , of lawful money of Great Britain, to be paid by the said A. B. into the Bank of England, and carried to the account of the sale of fee-farm rents, [*and in the case of a subsisting lease then the following words are to be added*], subject nevertheless to a lease thereof, granted under the great seal of Great Britain (or the seal of his Majesty's Exchequer, *as the case may be*), bearing date the day of , one thousand eight hundred and , unto , for a term of years, which will expire on or about the day of ; and from and immediately after the payment of the said sum in manner aforesaid, and the enrolment of this certificate, and the receipt for the said purchase-money in the office of the commissioners for auditing the public accounts of the kingdom, and thenceforth for ever the purchaser or purchasers [*as the case may be*] of the said rent [*or rents*] and his or

34 Geo. 3. c. 75.

(1) The act of 34 Geo. 3. c. 75. providing for the better management of the Crown lands and sale of fee-farm rents, enacts (sec. 11.), that when the surveyor-general shall have contracted with any person for the sale of any such rents, he shall grant a certificate thereof, in the above form, under his hand to the purchaser, to be delivered by him to the cashiers of the Bank of England, who shall indorse without fee or reward a receipt for the purchase money (see *post*. 235.). and which when enrolled, as required by the act, shall be returned to the purchaser and be ever after full evidence of his title.

their heirs, successors, or assigns, shall be adjudged, deemed, and taken to be in the actual seisin and possession of the said rent [or rents] so by him purchased by force and virtue of an act of Parliament passed in the thirty-fourth year of the reign of his Majesty King George the Third, intituled An Act [*inserting the title of this act*].

CERTIFICATE.

Contract.

Given under the hand of the said surveyor-general the
day of

(*Surveyor.*)

WITNESS (1).

(1) This certificate must be witnessed and attested by one of the principal clerks or other officer of the surveyor-general.

*** *The following is the form of the Receipt required by the act to be given to the purchaser.* Receipt.

Received the day of
of and from A. B. the sum of £ of lawful money
of Great Britain, being the consideration money expressed in the
above [or within] written certificate.

Witness my hand

For the Governor and Company
of the Bank of England.

(*Cashier.*)

CERTIFICATES.

*Discharge
(mortgage).*

No. CCLXV.

*A Certificate of the discharge of a Mortgage (1).
Variations where it is of the discharge of a Judgment (2).*

To the Register for the County of Middlesex, or his Deputy.
I (*the mortgagor*) of, &c. (3) do hereby certify that (*the mortgagor*)

Certificate may
be registered.

(1) It is provided by the registering acts before mentioned, that in case of mortgages, judgments, statutes, and recognizances, whereof memorials have been entered in the register office, if at any time afterwards a certificate shall be brought to the register or his deputy, signed by the respective mortgagors and mortgagees in such mortgage, the plaintiffs and defendants in such judgment, and the cognizors and cognizees in such statute or recognizance, their respective executors, administrators, or assigns, attested by two witnesses, whereby it shall appear that all monies due upon such mortgage, judgment, statute, or recognizance have been paid or satisfied in discharge thereof, which witnesses shall, upon their oath before the said register or his deputy, prove such monies to be satisfied or paid accordingly, and that they saw such certificate signed by the said parties, then, and in every such case, the register or his deputy shall make an entry in the said margins of the said register books against the registry of the memorial of such mortgage, judgment, statute, or recognizance respectively, that the same was satisfied and discharged according to such certificate, to which the same entry shall refer, and shall after file such certificate to remain upon record in the said register office.

Judgment.

(2) In the act which enables lands in Middlesex to be registered, the certificate is confined to the discharge of mortgages only, and does not extend, as in the other acts, to judgments, statutes, and recognizances.

Judgment.

(3) If the certificate be to discharge a judgment registered, say,
“ I (*the plaintiff*) of, &c. do hereby certify that (*the defendant*) of, &c. hath paid and satisfied all such sum and sums of money as were owing upon a judgment recovered in his Majesty's Court of King's Bench, of term, in the year of the reign, &c. by me the said (*plaintiff*) against the said (*defendant*) for £ and costs. A memorial whereof, &c.” *as above.*

of, &c. hath paid and satisfied all such sum and sums of money, as were due and owing upon, or by virtue of certain indentures of lease and release, by way of mortgage, bearing date the and days of , in the year of our Lord , and made between the said (*mortgagor*) of the one part, and me, the said (*mortgagee*) of the other part, a memorial whereof was registered on the day of , in the year of our Lord , B , No. . AND I do hereby require an entry of such payment and satisfaction, to be made in the Register's Book, wherein the same is registered, pursuant to the act of Parliament in that case made and provided, as witness my hand this day of

(*Mortgagee*) L. S. (1)

Signed, and satisfaction
acknowledged, in the presence of (2) }
A. B.
C. D.

CERTIFICATE.

Discharge
(mortgage).

(1) If the lands be situated in the West or East Riding of Yorkshire, the certificate must be under the hands, as well of the mortgagor as of the mortgagee; but if they be situated in Middlesex or in the North Riding of Yorkshire, it may be under the hand of the mortgagee only.

(2) There must be two witnesses to this certificate.

Witnesses.

CERTIFICATES.Life.

No. CCLXVI.

Certificate by a Rector, &c. of a person being living.

WE the rector, churchwardens, and parish clerk of the parish of
in the county of , Do hereby certify that
A. B. son of B. B. of, &c. and C. his wife, are now [or were on the
day of ,] [*or as the case may be*] living at ,
[or in this parish] as witness our hands the day of ,

(Rector.)

(Churchwardens.)

(Parish Clerk.)

CERTIFICATES.

Nomination.

No. CCLXVII.

*Certificate of the Nomination to a Curacy.**Variations where the appointment is to serve under an Incumbent in his own Church.*

TO THE RIGHT REVEREND FATHER IN GOD, , by divine permission, Lord Bishop of . These are to certify to your lordship, that (1) I (*the patron*) of, &c. do nominate and appoint A. B. clerk (2), to be curate of the free chapel or curacy of , in the county of , and your lordship's diocese of , now void by the death of , the last incumbent thereof, and to my gift or nomination, in full right belonging; humbly requesting your lordship to grant him your licence (3) for serving the said cure. In witness whereof I have hereunto set my hand and seal the day of , in the year of our Lord Christ .

(1) If the nomination be by an incumbent to officiate under him in his own church, say, Appointment of curate by incumbent.

"That I (*the rector or vicar*) rector [*or vicar*] of , in the county of , and your lordship's diocese of , do hereby nominate and appoint A. B. clerk, to perform the office of a curate in my church of aforesaid; and do promise to allow him the yearly sum of £ , for his maintenance in the same, humbly beseeching," &c. *as above*.

(2) If the appointment be to a perpetual curacy, the curate must be in priest's orders, see 13 and 14 Car. 2. c. 4. s. 14; but if the nomination be to serve under an incumbent in his own church it will be sufficient if he be in deacon's orders. Must be in priest's orders.

(3) By the 48th Canon no curate or minister can be permitted to officiate without the licence of the bishop of the diocese, or the ordinary of the place having episcopal jurisdiction, under his hand and seal; for the form of which see *post*. "LICENCE." Curates must be licensed.

CERTIFICATES.Chaplain.

No. CCLXVIII.

A Nomination or Appointment of a Chaplain by a Nobleman.
Variation where it is by a Bishop (1).

KNOW ALL MEN BY THESE PRESENTS, that I (2) Earl
 of , do hereby nominate, constitute and appoint (*the*
chaplain) to be one (3) of my domestic chaplains, to serve me in

Nomination by
 a bishop.

(1) If the nomination be by a bishop, say,
 “ , by divine permission, Bishop of , to all to
 whom these presents shall come sendeth greeting, KNOW YE, that I
 the said Bishop of , for and in consideration of the learning,
 good life, and sincere religion of our beloved in Christ, A. B. clerk,
 have nominated, admitted, constituted, and appointed, and by these
 presents Do nominate, admit, constitute, and appoint him the said
 A. B. one of our domestic chaplains, that he may by virtue hereof
 have and enjoy all the privileges, benefits, immunities, and ad-
 vantages which may or do of right belong to the chaplains of the
 bishops and peers of this realm, according to the form of the statute
 in that case made and provided. In testimony whereof we have put
 our seal, which we use in this case, to these presents, and have sub-
 scribed the same this day of , in the year of our
 Lord Christ, , and in the year of our translation.

Minor may
 qualify.

(2) Notwithstanding the peer be a minor he may qualify chaplains in
 the same manner as if he were of full age; Queen v. Bishop of Salisbury,
 cited in Acton's Ca. 4 Co. 119.

Number of chap-
 lains to be quali-
 fied by peers, &c.

(3) By the 21 Hen. 8. c. 13, every archbishop may have eight chap-
 lains; every duke and bishop, six; every marquis and earl, five; every
 viscount, four; every baron, knight of the garter, and the chancellor of
 England, three; every duchess, marchioness, countess, and baroness,
 being widows, or having married commoners, two; the treasurer, and
 comptroller of the king's household, the king's secretary, the dean of the
 chapel, the king's almoner, and the master of the Rolls, two; the chief
 justice of the King's Bench, and the warden of the Cinque Ports, one:

the performance of divine offices, within my house or chapel, and to have and enjoy all and singular the privileges, benefits, liberties, and immunities whatsoever given and granted to the chaplains of the barons and peers of this realm, by the statutes (1) and laws thereof. In witness whereof I have hereunto set my hand and seal (2) of arms this day of

CERTIFICATE.

Chaplain.

each of whom "may purchase a licence or dispensation, and take, receive, and keep two parsonages or benefices with cure of souls" By the 25 Hen. 8. c. 1. s. 2. every judge of the King's Bench and Common Pleas, the chancellor and chief baron of the Exchequer, and the king's attorney and solicitor general, and by the 33 Hen. 8. c. 28. the chancellor of the Duchy of Lancaster, the chancellor and treasurer of the Court of Augmentations, the chancellor of the Court of First Fruits and Tenths, the treasurer of the chamber, and the groom of the stole, may each of them have one chaplain to be attendant upon his person, having one benefice with cure, who may be non-resident upon the same. It may be proper to observe, that these statutes are to be construed strictly; if therefore a baron be created an earl, he can only qualify five chaplains, or if he be created warden of the Cinque Ports, it will not give him authority to qualify four; the qualification being in right of their interest, title, or capacity, and not of both; see Acton's Ca. 4 Co. 119; and if the qualification be not in respect of their birth, but only of their situation, as in the case of the warden of the Cinque Ports, it will determine upon their quitting it, see *ibid.* and the chaplain cannot afterwards take a second benefice, upon such qualification, although he may continue to retain a plurality taken in the lifetime of the qualifier. Dyer, 312.

(1) By the common law, and also by statute, personal residence upon their several cures is required of all ecclesiastical persons; but by the 21 Hen. 8. c. 13. commonly called the statute of non-residence, the chaplains of any archbishop or bishop, or of any spiritual or temporal lords of the parliament are exempted from residence "so long as they shall abide and dwell without fraud or covin, in any of the said honourable households."

Chaplains of peers, &c. exempted from residence.

(2) It is necessary that this appointment should be sealed as well as signed, for by the 21 Hen. 8. c. 13. s. 22. the chaplain is required, "when need shall be, to exhibit letters, under the hand and seal of his lord and master, testifying whose chaplain he is." And see also *Queen v. Savacree*, Godb. 41.

Nomination of chaplain must be under seal.

CERTIFICATES.Nomination for
orders.

No. CCLXIX.

*A Certificate of the Nomination of a Curate as a Title for
orders (1).*

TO THE RIGHT REVEREND FATHER IN GOD Lord Bishop
of These are to certify to your Lordship, that I (*the*
rector) rector [*or vicar*] of in the county of and
your Lordship's diocese of do hereby nominate and ap-
point A. B. to perform the office of a curate in my church of
aforesaid, and do promise to allow him the yearly sum of
£ for his maintenance in the same; and to continue him to
officiate as curate in my said church, until he shall be provided with
some other certain place where he may exercise his ministerial func-
tion, unless on account of any fault by him committed, he shall be
lawfully removed from performing the office of a curate in my said
church by your Lordship or your successors. AND I hereby
solemnly declare, that I do not fraudulently give this certificate to
entitle the said A. B. to receive Holy Orders, but with a real inten-
tion to employ him in my said church, according to what is before
expressed. As witness my hand, this day of

Title required
previously to
ordination.

(1) By the 33rd Canon (see Gibs. 161.) it is ordained that no person shall be admitted into sacred orders, except he shall exhibit to the bishop a presentation of himself to some ecclesiastical preferment then void in the diocese; or a certificate that he is provided either with some church within the said diocese where he may attend the cure of souls; or of some minister's place vacant either in the cathedral church of that diocese, or in some other collegiate church therein, also situate where he may execute his ministry; or that he is a fellow, or in right as a fellow, or to be a conduct or chaplain in some college of Oxford or Cambridge; or except he be a Master of Arts of five years' standing, that liveth at his own charge in either of the two universities; or except by the bishop himself that doth ordain him minister he be shortly after to be admitted either to some benefice or curacy then void.—If the bishop ordain any person without any of these titles, he must maintain him until he shall prefer him to some ecclesiastical living, under the penalty of being suspended from giving orders for the space of one year.

CERTIFICATE.Notary.

No. CCLXX.

**Certificate of a Person being Notary Public.*

I (*certifier*) assistant secretary to the Honourable United Company of merchants of England trading to the East Indies, [*or as the case may be*] do hereby certify unto whomsoever it may concern, that (*notary*), who hath passed and signed the foregoing act, is a sworn notary public practising in this city, and that to all instruments, acts and writings by him passed and signed, full faith and credit are and ought to be given in judicature and thereout. IN WITNESS whereof I have hereunto set my hand, in London, this day of

(*Certifier.*)

CERTIFICATES.

Notice
(printing press).

No. CCLXXI.

Certificate by Clerk of the Peace of Notice having been given of a Printing Press, or of carrying on the business of a Letter Founder, &c. to be entered in pursuance of Act of Parliament (1).

I, G. H. clerk [or deputy clerk] of the peace for [as the case may be] do hereby certify, that A. B., of _____, hath delivered to me a notice in writing, appearing to be signed by him, and attested by E. F. as a witness to his signing the same, that he hath a printing press and types for printing, which he proposes to use for printing [or intends to carry on the business of a letter-founder, or maker or seller of types for printing, or of printing presses] at _____, and which notice he has required to be entered in pursuance of an Act of the thirty-ninth year of his Majesty King George the Third [set forth the title of the Act]. WITNESS my hand this _____ day of _____

(Clerk.)

39 Geo. 3. c. 79. (1) By stat. 39 Geo. 3. c. 79. (sec. 23. 25.) notice is required to be given (for which see *post*. "NOTICE") to the clerk of the peace of the county or place, by every person having a printing press or types for printing, or carrying on the business of a letter-founder, or maker or seller of types for printing, or printing presses, in order that it may be entered as the act requires; and of which, clerk of the peace is ordered to grant a certificate, in the above form.

No. CCLXXII.

**A Certificate of the Registry of a Ship or Vessel in pursuance of Act of Parliament (1).*

THIS IS TO CERTIFY, That in pursuance of an Act passed in the sixth year of the reign of King George the Fourth, intituled An Act [*here insert the title of this Act, the names, occupation and residence of the subscribing owners*], having taken and subscribed the oath required by this Act, and having sworn that (he or they) together with [*names, occupations and residence of non-subscribing owners*] (is or are) sole owner or owners (2) in the proportions specified on the back thereof, of the ship or vessel called the (*ship's name*) (3), of (*place to which the vessel belongs*) which is of the burthen of (*number of tons*), and whereof (*master's name*) is master, and that the said ship or vessel was (*when and where built, or condemned as a prize, referring to builder's certificate, judge's certificate, or certificate of last registry then delivered up to be cancelled*) and (*name and employment of surveying officer*) having certified to us that the said ship or vessel has (*number*) decks and (*number*) masts, that her length from the fore-part of the main stern to the after-part of the stern-post aloft, is (*number of feet and inches*), her breadth at the broadest part (*stating whether that be above or between decks, if more than one deck or depth in the hold,*

(1) By 6 Geo. 4. c. 110. (sec. 2) it is enacted, that no ship or vessel shall be entitled to the privileges of a British registered ship until the person or persons claiming property therein shall have obtained a certificate of registry from the person authorised to grant the same (for which see *post.* Vol. III. "REGISTRY") in the above form: see also *ante*, "BOND." p. 218, notes. 6 Geo. 4. c. 110.

(2) No more than thirty-two persons can be entitled to be legal owners of any ship at one time as tenants in common, or be registered as such.

(3) It is declared by the above act, that the name by which a ship has been registered shall never afterwards be changed.

CERTIFICATES.Registry (ship).

if only one deck) is (*number of feet and inches*) that she is (*how rigged*) rigged with a (*standing or running bowsprit*) is (*description of stern*) sterned (*carvel or clinker*) built, has (*whether any or no*) gallery, and (*kind of head, if any*) head, and the said subscribing owners have consented and agreed to the above description, and having caused sufficient security to be given as is required by the said act, the said ship or vessel called the (*name*) has been duly registered at the port of (*name of port*). Certified under our hands at the custom-house in the said port of (*name of port*) this day of _____ in the year _____

Signed (Collector.)
(Comptroller.)

Indorsement.

N. B. It is required by the act cited in the preceding note, that on the back of the certificate an account of the parts or shares held by each of the owners shall be mentioned in the following form:—

Names of the several Owners.		Number of Shares of each Owner.
" (<i>Name</i>)	Thirty-two.
(<i>Name</i>)	Sixteen.
(<i>Name</i>)	Eight.
(<i>Name</i>)	Eight.
Signed		(Collector.) (Comptroller.)"

Bond.

And it is further provided (sec. 21.) that upon the obtaining the certificate of registry, a bond shall be given by the master and owner that the same shall be solely made for the service of the vessel, &c. (*see ante*, No. CCLVII. p. 218.). Also (sec. 22.) that if the master shall be changed the name of the new master shall be indorsed on the certificate, and a similar bond to that before mentioned given by him.

No. CCLXXIII.

**A Certificate to the Ordinary of the condition of the Dwelling-house belonging to a Benefice made in pursuance of Act of Parliament (1).*

WE the reverend A. B. of in the county of clerk,
and C. D. of clerk, being two clergymen within the diocese
of the bishop of do hereby certify to the said bishop, pur-
suant to the directions and instructions sent by him to us, that we
have made enquiry into the state and condition of the buildings upon
the glebe belonging to the rectory, vicarage, &c. of within
the said diocese, at the time the reverend clerk, the present
incumbent thereof, entered upon the said living, which was in or
about the year of our Lord , and do find [that the same hath
been kept in due and common repair, without any wilful neglect, *if
the case be so*] or [that the same hath by wilful negligence been
suffered to go to decay, and that they have sustained damage from a
want of common or ordinary repair to the amount of £ ,] and
we have also enquired into the money received by the said
for dilapidations from the representative of the former incumbent,
and do find that he hath received the sum of £ for such dilapi-
dations, and [that he hath expended the whole *or* thereof, *as
the case may be*, in the necessary repairs of the buildings] or [that
the same hath not been laid out or expended in repairing the build-
ings] upon the glebe belonging to the said living. Given under our
hands this day of

(*Certifiers.*)

(1) By the 17 Geo. 3. c. 53. (sec. 5.) as explained by subsequent acts 17 Geo. 3. c. 53.
(see 21 *ib.* c. 66; 58 *ib.* c. 48; 59 *ib.* c. 84; 3 Geo. 4. c. 72.) it is enact-
ed, that where there shall not appear to be any convenient or fit house
for the residence of the incumbent of any ecclesiastical living or other
benefice, the same may be provided with the consent of the ordinary;
but that previously to such consent being given, he shall cause an en-
quiry to be made by some proper persons living in or near the parish, of
the state and condition of the incumbent's house, and a certificate
thereof to be laid before him, specifying the particulars mentioned in
the above form.

CERTIFICATES.Residence
(incumbent).

No. CCLXXIV.

**Certificate of the Residence of an Incumbent for the period required by Act of Parliament (1).*

WE, A. B. rector, vicar or officiating minister [*as the case shall be*] of the parish of in the diocese of clerk, and C. D. rector, vicar or officiating minister [*as the case shall be*] of the parish of within the said diocese, clerk, [which said parishes of and are near adjoining to the parish of within the said diocese] do hereby certify that E. F., rector, vicar or incumbent [*as the case shall be*] of the said parish and parish church of aforesaid, hath resided upon his living or benefice within that parish for the space of twenty weeks between the day of and the day of last. Given under our hands this day of .

- 17 Geo. 3. c. 53. (1) The act of 17 Geo. 3. c. 53. providing for the residence of parochial clergy, requires (sec. 6.) that before an incumbent shall be entitled to the benefit of the act in respect to the apportionment of principal and interest money borrowed by virtue of the act for building or repairing the parsonage-house, he shall deliver to the mortgagee a certificate under the hands of two rectors, vicars or officiating ministers of some parishes near adjoining, of his having resided twenty weeks upon the living or benefice within the year, which is directed to be in the above form, or to that effect.

CHARGE.

Annuity.

No. CCLXXV.

**Charge (1) upon Premises already charged with an Annuity by
and to the same Grantor and Grantee.*

Variations as below (2).

THIS INDENTURE, of _____ parts, made the _____ day of _____, in the _____ year of the reign, &c. and in the year of our Lord 18 _____. BETWEEN (*the grantor*) of, &c. _____ of the first part, (*the grantee*) of, &c. _____ of the second part, and (*the trustee in the original grant*) of, &c. _____ of the third part.

WHEREAS by another indenture bearing date the day of , in the year , and made or expressed to be made between the same persons as are hereinbefore named as parties hereto, the said (*grantor*) for a valuable and sufficient consideration therein mentioned, granted unto the said (*grantee*) an annuity or yearly sum of £ , during the natural lives of (*the nominees*) of, &c. and the life of the survivor of them, and made the same chargeable upon and issuable out of ALL, &c. AND for better securing the payment of the said annuity the said messuages and hereditaments were thereby demised unto the said (*trustee*), his executors, administrators, and assigns, from the date of the same indenture for the term of years, to be thence next ensuing, in trust to raise and pay the said annuity if in arrear, by the ways and means therein and in these presents hereafter expressed. AND WHEREAS the said (*grantee*) hath agreed with the said (*grantor*) for the purchase of a further annuity or yearly sum of £ , for the joint

**Recital of
former grant.**

**Contract for
further annuity.**

(1) On charges, see *post.* p. 300, notes.

(2) If the annuity be secured on an estate tail, see MOD. PREC. Vol. VI. p. 187. 3d Ed.

If on copyholds, see *ib.* p. 184.

If on an estate for life, see *ib.* p. 167.

If on leaseholds, see ib. p. 215.

If on money in the Funds, see ib. p. 247.

Charge.
Variations.

Surety.

CHARGE.Annuity.

Bond, &c.

WITNESS.
Grantor grants
further annuity.

lives of them the said (*nominees*) (1) and the life of the survivor of them, to be secured by the bond and warrant of attorney of the said (*grantor*), and to be charged upon the aforesaid messuages, lands, tenements, and hereditaments, in like manner as the said annuity of £ is chargeable thereupon, and be paid at the times and in the manner hereafter mentioned, at or for the price or sum of £ . AND WHEREAS in pursuance of the said agreement, the said (*grantor*) by his bond or obligation in writing bearing even date with these presents, has accordingly become bounden for himself and his heirs to the said (*grantee*), his executors, administrators, and assigns, in the penal sum of £ , with a condition thereunder written for making void the same on payment of the same annuity or yearly sum of £ , on the days, and at the times, and in the manner hereinafter mentioned; and has also executed a warrant of attorney, bearing even date with the said bond, empowering certain attornies therein named to confess judgment against him in an action of debt on the said bond in the Court of King's Bench at Westminster, in or as of term last, now next ensuing, or any subsequent term, for the said sum of £ together with costs of suit, as in or by the said bond and warrant of attorney, reference being thereunto respectively had, will more fully and at large appear. NOW THIS INDENTURE WITNESSETH, that in further pursuance of the aforesaid agreement, and for and in consideration of the sum of £ (2) of lawful and current money of the United Kingdom of Great Britain and Ireland to the said (*grantor*) in hand well and truly paid by the said (*grantee*), at or immediately before the sealing and delivering of these presents, the receipt whereof, and that the same is in full for the purchase of the said annuity or yearly sum of £ , the said (*grantor*) doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*grantee*), his executors and administrators, by these presents, HE the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents DOTH

Life of grantor,
&c.

Consideration.

Surety.

(1) If the annuity be granted during the life of the grantor or grantee, see *ante*, MOD. PREC. Vol. VI. p. 118. 3d ed.

(2) If the consideration be other than money paid down, see *ib.* p. 75, rider (A).

If there be a surety for the grantor, see *ib.* p. 315.

CHARGE.

Annuity.

To issue out of
premises
charged with
former annuity.

During the life
of former no-
minees.

give, grant, bargain, and sell unto the said (*grantee*), his executors, administrators, and assigns, one annuity or clear yearly sum of £ , of such lawful and current money as hereinbefore is mentioned, to be issuing and payable, and had, received, and taken out of and from, and charged and chargeable upon ALL and singular the messuages, lands, tenements, and hereditaments (1) hereinbefore particularly described and mentioned, or intended so to be, and granted and demised in or by the hereinbefore in part recited indenture of the day of , with their and every of their appurtenants, To HAVE, HOLD, receive, perceive, and take the said annuity or yearly sum hereby granted, or secured, or expressed, or intended so to be, unto and by him the said (*grantee*), his executors, administrators, and assigns, from the day next before the day of the date hereof, for and during the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them, and up to the day of his or her decease, and to be paid and payable at or in the common dining hall of the Inner Temple, London, by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon of the several and respective days and times next hereinafter mentioned, that is to say, the day of , &c. in every year, and also a due and proportionable part of the said annuity or yearly sum for or in respect of so many days as shall happen to have elapsed from the last quarterly day of payment thereof next preceding the decease of the survivor of them the said (*nominees*) up to and until the day of his or her decease, and all and singular which said payments are and is to be and be made free and clear of and from any deduction or abatement whatsoever for or on account of any taxes, duties, matter, cause, or thing whatsoever, and the first payment thereof to be made on the day of next ensuing the date of these presents, if either of them the said (*nominees*) shall be then living, and if not, then a proportionable part thereof, immediately upon the decease of the survivor of them. AND the said (*grantor*) for himself, &c. [*Covenant to pay the annuity, with power of distress and entry, as in other cases*] (2) AND THIS INDENTURE FURTHER WITNESSETH, that for the better securing the payment of the said annuity or yearly sum of £ in the manner aforesaid, it is hereby declared and agreed by and be-

FURTHER
WITNESS.
Declaration
that trustee
shall hold the

(1) If the annuity be granted out of money in the Funds or the like, Money in Funds.
see *ante*, MOD. PREC. Vol. VI. 3d ed. p. 252.

(2) See *ib.* p. 23, *et seq.*

Covenant to pay,
&c.

CHARGE.**Annuity.**

premises charge-
able with the ad-
ditional annuity.

Covenant by
grantor that he
has right to
charge, &c.

tween the several parties hereto, and more especially the said (*grantor*) doth hereby declare and agree with and to the said (*grantee*) and (*trustee*) and their respective executors, administrators, and assigns, that he the said (*trustee*), his executors, administrators, and assigns, shall from henceforth stand possessed of and interested in all and singular the messuages or tenements and hereditaments so comprised in the term of years, so granted or demised to, or otherwise vested in him by the said hereinbefore in part recited indenture, or mentioned or intended so to be, upon trust, not only for securing the said annuity or yearly sum of £ , by the same indenture expressed to be granted or secured, but also the said annuity or yearly sum of £ hereby granted, or expressed or intended so to be, and to that end and intent it is hereby further declared and agreed that if the said last mentioned annuity or yearly sum of £ , or any part thereof, shall be behind or unpaid by the space of days next after either of the days or times hereinbefore appointed for payment thereof, he the said (*trustee*), his executors, administrators, and assigns, shall or lawfully may, &c. [*Power of entry by trustee, and of sale, application of the money, &c. as in other cases*] (1). AND the said (*grantor*) for himself, his heirs, &c. doth hereby covenant, declare, and agree with and to the said (*grantee*), his executors, administrators, and assigns, in the manner following, (that is to say) that he the said (*grantor*) now hath in himself full power and lawful authority to grant the said annuity or yearly sum of £ unto the said (*grantee*), his executors, administrators, and assigns, for or during the term or period aforesaid, and to charge and secure the same upon or by means of the said hereditaments and premises in the manner hereinbefore mentioned concerning the same, and that all and singular the same hereditaments and premises shall from time to time, and at all times hereafter, during the subsistence of the said annuity or yearly sum of £ hereby granted or secured, be subject to and chargeable

Power of entry
and sale, &c.
Brevity.

(1) See *ante*, MOD. PREC. Vol. VI. 3d Ed. p. 35.

Or instead of inserting these powers say, for brevity sake,

“ Shall or lawfully may have and exercise all and every the same or like powers and authorities whatsoever for recovering and receiving the same, as in or by the said in part recited indenture is or are given or provided for securing the payment of the said annuity or yearly sum of £ , thereby expressed to be granted or secured.”

CHARGE.

Annuity.

with the same, and to the several powers, trusts, and remedies here-
 inbefore given or provided for payment thereof, in like manner as
 the same are, or are expressed, or intended to be chargeable with the
 said annuity or yearly sum of £ , granted or secured by
 the said in part recited indenture of the day of ,
 and according to the true intent and meaning of these presents, and
 that without any manner of hindrance, interruption, or denial what-
 soever of, from, or by him the said (*grantor*), his heirs or assigns,
 or any other person or persons whomsoever. AND further, that, &c.
 [Covenant for further assurance] (1). AND WHEREAS it has been
 agreed that the judgment to be confessed upon the hereinbefore in
 part recited warrant of attorney, executed by the said (*grantor*) as
 hereinbefore is mentioned, shall be forthwith entered upon record in
 the said court of King's Bench at Westminster. AND THIS IN-
 DENTURE FURTHER WITNESSETH, &c. [Declaration that judgment
 shall be considered as a collateral security only] (2). AND WHERE-
 AS upon the treaty for the purchase of the said annuity it was mu-
 tually declared and agreed by and between the parties hereto, that
 the said (*grantor*) should at any time thereafter be at liberty to re-
 purchase the said annuity at the sum of £ , upon giving
 six calendar months' previous notice in writing thereof to the said
 (*grantee*). NOW THIS INDENTURE FURTHER WITNESSETH, that in
 pursuance of the said agreement it is hereby declared and agreed, &c.
 [Usual power of repurchase] (3). IN WITNESS, &c.

WITNESS.
 Judgment a col-
 lateral security
 only.
 Power of re-
 purchase.

(1) See *ante*, MOD. PREC. Vol. VI. p. 54.

If the annuity be secured on money in the Funds, add letter of at- Bank Annuities,
 torney, as ib. p. 257. &c.

(2) See ib. p. 62.

(3) See ib. pp. 65, 135.

If the annuity be granted during the life of the grantor, add covenant Insurance.
 as to insurance, as ib. p. 59.

. See various provisos, &c. to be added where occasion may re- Additions.
 quire, *ante*, MOD. PREC. Vol. VI. p. 84, *et seq.*

CHARGE.

Annuity.

No. CCLXXVI.

Charge (further) by Indorsement on the first Grant.Variations as below (1).*Contract for
purchase., WITNESS.
Grantor grants
additional an-
nuity to issue
out of the within
premises.

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN the within named (*grantor*) of the one part, and the within named (*grantee*) of the other part. WHEREAS the said (*grantee*) hath, since the execution of the within written indenture, agreed with the said (*grantor*) for the purchase of a further annuity or yearly sum of £ for the life of the said (*grantor*), at or for the price or sum of £ , to be secured in the same or like manner as the within mentioned annuity or yearly sum of £ . NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ (2) in lawful and current money of the United Kingdom of Great Britain and Ireland, to the said (*grantor*) in hand well and truly paid by the said (*grantee*), at or before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the purchase of the said annuity, the said (*grantor*) doth acknowledge by these presents, HE the said (*grantor*) [HATH given and granted, and by these presents DOTN for himself, his heirs, executors and administrators, give and grant and confirm unto the said (*grantee*), his executors, administrators or assigns, for his and their own proper use and benefit, one annuity or clear yearly sum of £ of lawful current money of the United Kingdom of Great Britain and Ireland, to be charged and chargeable upon, and issuing, payable, had, received and taken out of and from all and every the messuages, lands, tenements and hereditaments, dividends, interest and annual proceeds

Surety, &c.

Consideration.

(1) See *post.* p. 300, notes, and *ante*, MOD. PREC. Vol. VI. p. 348. n. (1); and if a surety join, see *ib.* 325. 328. marg. "Surety."

(2) If the consideration be other than money paid down on the execution of the assurance, see *ib.* p. 75. rider (A).

[*as the case may be*] in or by the within written indenture expressed or intended to be charged or chargeable with the payment of the said within mentioned annuity or yearly sum of £ , To HAVE, hold, receive, perceive, take and enjoy the said annuity or yearly sum of £ hereby granted or secured, or intended so to be, unto and by him the said (*grantee*), his executors, administrators and assigns, from the day of the date of these presents, for and during the term of the natural life of the said (*grantor*) (1), to be paid and payable by equal payments at and upon the same days and times, and in the same manner and form as are in and by the within written indenture appointed for payment of the annuity or yearly sum, with a due proportion thereof, for any interval which may elapse between either of the said days and the day of the death of the said (*grantor*), and up to the day of his decease, the first payment thereof to be made on day of next ensuing the date of these presents, if he the said (*grantor*) shall be then living; but if not, then a proportionate part thereof immediately upon his decease. AND the said (*grantor*), for himself, &c. [*Covenant by grantor to pay the annuity*] (2). AND THIS INDENTURE FURTHER WITNESSETH, that for the better securing the payment of the said annuity or yearly sum of £ hereby granted or secured, or intended so to be, the said (*grantor*), for himself, his heirs, executors and administrators, doth hereby further covenant, grant, declare and agree with and to the said (*grantee*), his executors, administrators and assigns, in the manner following, (that is to say) that he the said (*grantee*) [and (*if so*) the within named (*trustee*) respectively, and their respective] his executors, administrators and assigns, shall and may from henceforth stand possessed and interested in all and every the messuages, lands, tenements and hereditaments, or dividends, interest and annual proceeds [*as the case may be*] upon trust, as well for securing the payment of the said annuity or yearly sum of £ hereby granted, as of the said annuity or yearly sum of £ granted, or mentioned or intended to be granted or secured, in and by the within written indenture, and to that end and intent shall and lawfully may have, enjoy and exercise all and singular the same or like powers and authorities in all respects whatsoever, for receiving and recovering the said annuity or yearly sum of £ as are given or granted to him and them in or by the

CHARGE.

Annuity.Payable during
the life of
grantor.

FURTHER

WITNESS.

Grantee or
trustee to have
like powers for
securing the pre-
sent as the
former annuity.

(1) If the annuity be granted during the life or lives of the grantee or of nominees; see *ante*, MOD. PRÆC. Vol. I. p. 21; also *ib.* p. 346.

(2) See *ib.* p. 23.

Life of grantee
&c.

CHAROK.

Annuity.

And covenants
&c. in former
grant shall ex-
tend to this.

Further assu-
rance.

Power of re-
purchase.

within written indenture for receiving and recovering the said annuity or yearly sum of £ thereby granted and secured, or mentioned or intended so to be. AND also that the covenant or agreement in the within written indenture contained, for enabling the said (*grantee*) to insure the life of the said (*grantor*) shall be binding upon him the said (*grantor*), in regard, as well to any further assurance to be effected by reason of these presents, on the annuity hereby granted, as any assurance to be made by reason of the within written indenture, or the annuity thereby granted. AND moreover, that the agreement and declaration in the within written indenture contained relative to or in respect of the judgment and execution to be entered up and issued respectively, for securing the payment of the within mentioned annuity or yearly sum of £ , shall extend to, or be construed and deemed to extend to any judgment or execution to be entered up or to issue by virtue of the warrant of attorney given for securing the payment of the said annuity or yearly sum of £ hereby granted. AND moreover, that he the said (*grantor*) shall and will at any time hereafter, at his own costs and expense, upon the reasonable request of the said (*grantee*), his executors, administrators or assigns, make, do and execute any further act, deed, matter or thing whatsoever, for the better or more satisfactorily charging the within mentioned premises with the payment of the said annuity or yearly sum of £ expressed to be hereby granted, in such manner as he or they, or his or their counsel in the law shall lawfully require. AND the said (*grantee*) doth hereby, for himself, his executors, administrators and assigns, agree and declare with and to the said (*grantor*), his heirs, executors and administrators, that he the said (*grantor*) shall have and be entitled to the like privilege (1) and power of re-purchasing and extinguishing the said annuity or yearly sum of £ hereby granted, on payment of the sum of £ to him the said (*grantee*), his executors, administrators and assigns, after six calendar months' notice being given thereof, as in the within written indenture is contained, as, to or in respect of the within mentioned annuity or yearly sum of £ on payment of the sum of £ (2). IN WITNESS, &c.

Repurchase by
instalments.

Provisos, &c.

(1) If the grantor is to have the liberty of re-purchasing this annuity by instalments, but has not that privilege in respect of the former annuity, add, instead of this clause, the proviso, *ante*, p. 66.

(2) See various provisos, &c. to be added where circumstances may require it, *ante*, MOD. PREC. Vol. VI. p. 84. *et seq.* and INDEX, voc "AGREEMENT," "COVENANT," "PROVISO."

CHARGE.

Annuity.

No. CCLXXVII.

**A Charge of an Annuity upon Premises by way of collateral security so as to avoid a forfeiture for alienation under a devise (1), also provision for an accumulation fund to keep down arrears (2).*

THIS INDENTURE of parts made the day of in the year of the reign, &c. and in the year of our Lord 18 .
 BETWEEN (*grantor*) of, &c. of the first part, (*grantee*) of, &c. of the second part, and (*a receiver*) of, &c. of the third part. WHEREAS Recital of will.
 by indenture bearing date, [*recite shortly the conveyance or assignment of the premises to the grantor*]. AND WHEREAS (*testator*) of, &c. by his last will and testament in writing bearing date, &c. duly executed and attested, (amongst other things) devised and bequeathed to the said (*grantor*), for the term of his life, the messuages, &c. hereinafter described, but nevertheless upon condition, that he the said (*grantor*) should not alienate, convey or dispose thereof or of any part thereof, or of his interest therein, and thereby declared that in case of his so doing he should forfeit all claim to any benefit under his (*the said testator's*) will, and that the said messuages should be immediately sold, and the produce thereof be vested in the Funds for the equal benefit of the lawfully-begotten children of the said (*grantor*). AND the said (*testator*) also directed that at the decease of the said (*grantor*) the said messuages should be sold, and the produce vested in the Funds for the purposes therein mentioned; AND WHEREAS the said testator aforesaid departed this life without having revoked or altered his said will, and upon his decease the said will was duly proved by the executors therein named, on the day of in the Court of, &c. (*as the case was*). AND Contract for part of annuity.
 whereas the said (*grantor*) hath contracted and agreed with the

(1) See opinions at the end of the Precedent (*post. rider* (A). p. 272).

(2) This was rendered proper, chiefly by reason of the premises being leaseholds and holden but for a short unexpired term.

CHARGE.

Annuity.

Agreement for
an accumulation
fund.

Warrant of at-
torney given.

said (*grantee*) for the sale to him of a clear annuity or yearly sum of £ to be payable to the said (*grantee*), his executors, administrators or assigns, henceforth and during the natural life and up to the day of the decease of the said (*grantor*), at or upon the days and times, and in the manner hereinafter mentioned, but subject nevertheless to be re-purchased upon the terms and conditions hereinafter expressed; the true and *bonâ fide* consideration for the sale and purchase of which said annuity was and is the sum of £ .

AND WHEREAS upon the treaty for the purchase of the same annuity, it was proposed and agreed, that in order to provide a fund for the better payment thereof, the said (*grantor*) should advance and pay to, or place in the hands of the said (*grantee*), his executors, administrators or assigns, exclusive of or for the payment of the same annuity, the sum of £ yearly and every year during the term of years, or during so many years of the said term as the same annuity should continue payable; and which said yearly payment or sum of £ should be from time to time invested by the said (*grantee*), his executors, administrators or assigns, at their or her option, either in purchasing, in the manner hereinafter mentioned, one or more annuity or annuities of equal duration with the said annuity of £ , and to be accepted and taken by him or them in lieu and satisfaction, or in reduction and part payment thereof, as the case might require, or otherwise should be invested in his or their name or names in the purchase of three per cent. Consolidated Bank Annuities, to be held by him or them during the continuance of the said annuity in the manner hereinafter mentioned: And it was also proposed and agreed, that the said annuity of £ , and also the payment of the said yearly sum of £ during the term or period, and for the purpose aforesaid, should be secured by a judgment to be entered up in the Court of King's Bench against the said (*grantor*) at the suit of the said (*grantee*) for the sum of £ and costs of suit. AND WHEREAS in pursuance of the said last mentioned agreement, the said (*grantor*) hath, by a certain warrant of attorney or instrument in writing under his hand and seal, bearing even date with these presents, authorized certain attorneys therein named, jointly or severally, or any other attorney of the said Court of King's Bench, by confession or otherwise, to suffer judgment to be entered up against him the said (*grantor*) in the said court in an action of debt, at the suit of the said (*grantee*), for the sum of £ and costs of suit; and by which said warrant of attorney it is declared that the said judgment is intended to stand and shall accordingly be deemed and considered only as a security in

CHARGE.

Annuity.Agreement of
repurchase.

the first place for the due and regular payment by the said (*grantor*) to the said (*grantee*), his executors, administrators or assigns, of the said annuity or yearly sum of £ thenceforth, for and during the natural life and up to the day of the decease of the said (*grantor*), at or upon the days or times, and in the manner therein and hereinafter more particularly mentioned; and in the next place as a security for the due and regular payment by the said (*grantor*) to the said (*grantee*), his executors, administrators or assigns, of the said yearly sum of £ , during the term or period and for the purpose hereinbefore and hereinafter more particularly expressed. AND it is also by the said warrant of attorney provided that the said (*grantor*) shall be at liberty at any time thereafter to repurchase the said annuity of £ , upon the terms and conditions therein and hereinafter mentioned in that behalf, and that no execution shall be issued or taken out upon the said judgment unless and until either the said annuity of £ , or some part thereof, or the said yearly payment or sum of £ , or some part thereof, shall be in arrear for the space of twenty-one days; and that in case of any such default, it shall be lawful for the said (*grantee*), his executors, administrators or assigns, at his or their election, at once to levy execution for the whole of the said sum of £ and costs of suit, or otherwise to levy execution for any part or parts thereof from time to time as he or they shall think necessary or expedient; and that the clear surplus (if any) of the sum or sums to be levied by virtue of any such execution upon the said judgment, which shall remain after payment of the costs of levying the same and of the arrears, or other sum or sums of money for which the same was so levied as aforesaid, shall be invested and applied by the said (*grantee*), his executors, administrators or assigns, in the manner therein and hereinafter mentioned with respect to the said yearly payment or sum of £ . AND whereas a considerable part of the said sum of £ being wanted by the said (*grantor*) for the purpose of repairing and putting into a complete state of repair the said several messuages and premises to him given or devised by the hereinbefore in part recited will of the said (*testator*), deceased, it was, upon the treaty for the sale and purchase of the said annuity of £ , further proposed and agreed by and between the said (*grantor*) and the said (*grantee*), that the said several premises should be and be made a collateral or further security for, and should be charged with not only the due and regular payment of the same annuity, but also of the

CHARGE.Annuity.

WITNESS.
Grantor cove-
nants to pay an
annuity for his
life.

said yearly sum of £ for the time or period, and for the purpose aforesaid, in the manner hereinbefore mentioned or expressed, and that the same annuity, and also the said yearly sum of £ should be further secured by the covenant of the said (*grantor*) hereinafter contained; and it was further agreed that the costs, charges and expenses of preparing, executing, enrolling and perfecting the several securities for the said annuity, should be wholly borne and paid by the said (*grantor*). NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said recited agreement on the part of the said (*grantor*), and in consideration of the said sum of £ of lawful money of the United Kingdom of Great Britain and Ireland to the said (*grantor*) in hand well and truly paid by the said (*grantee*) upon or immediately before the sealing and delivery of these presents, the receipt of which said sum of £ in full for the purchase of the said annuity or yearly sum of £ the said (*grantor*) doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release and for ever discharge the said (*grantee*) by these presents, He the said (*grantor*) doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*grantee*), his executors, administrators and assigns, that he the said (*grantor*) shall and will well and truly pay, or cause to be paid unto the said (*grantee*), his executors, administrators or assigns, henceforth for and during the natural life, and up to the day of the decease of him the said (*grantor*), one annuity or yearly sum of £ of lawful money of Great Britain, free from taxes, and clear of all other deductions and abatements whatsoever, by four equal quarterly payments in every year, on the day of , the day of , the day of and the day of respectively (the first quarterly payment to become due and be made on the day of now next ensuing, provided the said (*grantor*) shall be then living) together with and including a proportionate part of the yearly payment of the said annuity which shall or may be growing due at the time of his decease, to be computed to the day of his decease from the day of the date of these presents, or the then last preceding day of payment, as the case may require, and to be paid immediately upon the decease of the said (*grantor*), being the same annuity or yearly sum of £ as is secured or intended to be secured to the said (*grantee*), his executors, administrators or assigns, by the said recited warrant of attorney; and also that he the said (*grantor*) shall and will well and truly pay to and place in the hands of the said

Also a further
yearly sum as a
payment fund.

(*grantee*), his executors, administrators or assigns, the sum of £ yearly and every year during the term of years from the day of the date of these presents, or during so many years of the said term as the said annuity of £ hereinbefore covenanted to be paid as aforesaid shall be and continue payable, and shall and will make the first payment of the said yearly sum of £ on the day of which will be in the year , provided the said annuity of £ shall be then payable, and shall and will make each succeeding payment of the said yearly sum of £ on the day of in each successive year, for the said term of years, or so many years of the said term as the said annuity of £ shall continue payable, being the same yearly payment or sum of £ as is mentioned in and secured by the said warrant of attorney. AND it is hereby agreed and declared by and between the said parties to these presents, and particularly the said (*grantor*) doth hereby declare, consent, agree and direct that the said (*grantee*), his executors, administrators or assigns, shall stand and be possessed and interested of and in the said yearly sum of £ to be so paid to him or them, or placed in his or their hands from time to time for the term or period aforesaid, and of and in the interest, dividends or income thereof, and of any surplus or accumulations of the interest, dividends or income thereof from time to time, which shall not be required for all or any of the purposes hereinafter mentioned, upon the trusts following, (that is to say) UPON TRUST at the option of the said (*grantee*), his executors, administrators or assigns, to invest and apply the said yearly sum of £ or any part thereof, as the same shall from time to time be received by him or them, and the said dividends, interest or income, or other surplus or accumulations thereof, or any part thereof respectively, either in purchasing in his or their name or names, of and from the commissioners for the reduction of the national debt, or any public company or companies for the time being empowered to grant life annuities, one or more annuity or annuities of equal duration with the said annuity of £ hereby secured, and to be accepted and taken in lieu and satisfaction, or in reduction and part payment of the same annuity, as the case may require; or otherwise to invest the same yearly payments or payment of £ from time to time, and the said interest, dividends or income, or such surplus or accumulation of the said interest, dividends or income thereof as aforesaid, or any part or parts thereof respectively, in the name or names of him the said (*grantee*), his executors, administrators or assigns, in the purchase of three per cent. Consolidated Bank

CHARGE.

Annuity.

Application of
the payment
fund.

To be vested in
purchase of
other annuities.

To be received
in payment of
the annuity here-
by granted.

CHARGE.Annuity.

On cessation of
annuity in trust
for grantor.

FURTHERWITNESS.

Grantor charges
premises with
payment of the
annuity.

Annuities, and by and out of the dividends, income or yearly proceeds therefrom arising, and if such dividends, income or yearly proceeds shall be insufficient, then in addition thereto by selling and disposing from time to time of a sufficient part of the said Bank Annuities, to pay and satisfy, or retain the said annuity or yearly sum of £ as the same shall from time to time grow due and become payable, or any part of the same annuity, together with all such costs, charges and expenses as he or they shall or may sustain or be put to in recovering and enforcing the payment of the said annuity, or any arrears thereof, during the continuance of the same annuity, or of the said yearly sum of £ or any part thereof, during the term or period for which the same last mentioned yearly sum shall continue payable as aforesaid, or otherwise, in or about the execution of the trusts aforesaid, or any of them; and after the determination of the said annuity or yearly sum of £, UPON TRUST to pay over or transfer all and singular the monies which shall then have accumulated in the hands of the said (*grantee*), his executors, administrators or assigns, from the said yearly payment or sum of £ or otherwise, and the stocks, funds and securities in or upon which the same shall for the time being be invested, or so much and such part thereof respectively as shall not have been applied for the purposes aforesaid, or any of them, unto the said (*grantor*), his executors, administrators or assigns, for his and their own use and benefit.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance and performance of the said agreements on the part of the said (*grantor*), and for the considerations hereinbefore mentioned, He the said (*grantor*) doth hereby for himself, his heirs, executors and administrators, covenant, grant, declare and agree with and to the said (*grantee*), his executors, administrators and assigns, That the said messuages and premises to him the said (*grantor*), given or devised by the said hereinbefore in part recited will of the said (*testator*) deceased, in the manner hereinbefore mentioned, with the rights, members and appurtenants thereunto respectively belonging or appertaining, shall henceforth, during the continuance of the said annuity of £ hereinbefore covenanted to be paid as aforesaid, stand and be a security for, and charged and chargeable with the payment, from time to time, to the said (*grantee*), his executors, administrators or assigns, of all arrears of the same annuity which shall or may from time to time remain due and unpaid upon or after any of the days or times hereinbefore, and by the said warrant of attorney limited and appointed for the payment thereof; and also for and with the payment to the said (*grantee*), his executors,

CHARGE.

Annuity.

administrators or assigns, of all or any part or parts of the said yearly sum of £ hereinbefore covenanted, and by the said

warrant of attorney secured to be paid to him or them, or placed in his or their hands, on the days or times, during the time or period, and in the manner and for the purposes hereinbefore, and in the said warrant of attorney particularly mentioned, in case the same yearly sum, or any part or parts thereof respectively shall happen to be behind and unpaid at or after any of the same days or times; and also for and with the payment of all costs, charges, damages and expenses which at any time or times hereafter, during the continuance of the said annuity of £ hereby and by the said warrant of attorney

secured as aforesaid shall or may be sustained or incurred by the said (*grantee*), his executors, administrators or assigns, in or about suing forth any execution or executions, or other proceedings, upon the said judgment or otherwise enforcing the payment from time to time of the said annuity of £ , or any arrears thereof, or of the yearly sum of £ , or any part or parts thereof, during the

term or period for which the said yearly sum shall continue payable as aforesaid. AND the said (*grantor*) doth hereby, for himself, his heirs, executors and administrators, further covenant, grant and agree with and to the said (*grantee*), his executors, administrators and assigns, that in case the said annuity or yearly sum of £ hereby and by the said warrant of attorney secured as aforesaid, or

any part thereof, or the said yearly payment or sum of £ , or any part thereof, during the continuance of the same yearly payment, shall happen to be in arrear and unpaid for the space of twenty-one days next over or after any of the days or times hereinbefore, and by the said warrant of attorney limited and appointed for payment thereof respectively, then and in either of the said cases, and from time to time as often as the same shall happen, it shall and may be lawful for the said (*grantee*), his executors, administrators and assigns, either to commence any action or actions in his or their own name or names, or in the name of the said (*grantor*), or otherwise, against all or any of the tenants, under-lessees or occupiers of the said several premises, or any of them, or any part thereof respectively, for the recovery of their or any of their rents or rent, or any arrears thereof respectively which may be then due, or otherwise, and at the option of the said (*grantee*), his executors, administrators or assigns, into and upon the said several leasehold premises hereby charged with the payment of the said annuity of £ and the said yearly sum of £ , or the arrears thereof respectively, or any part or parts of the same premises in

Grantee may receive rents of tenants if annuity in arrear for 21 days.

Or by distress.

CHARGE.Annuity.

the name of the whole, to enter and distrain for the same annuity and yearly payment or sum, or either of them, and all arrears thereof respectively, and the distress and distresses then and there found to take, lead, drive, carry away and impound, and also detain, sell and dispose of according to due course of law, in the same manner in all respects as landlords are authorised to do in relation to distresses for arrears of rent reserved upon leases for years, to the intent that thereby and therewith, or otherwise, the said annuity or yearly sum of £

hereby and by the said warrant of attorney secured and made payable as aforesaid, and all arrears thereof then remaining due and unpaid, and also the said yearly payment or sum of £

, hereby and by the said warrant of attorney also secured and made payable, in manner and for the purposes therein and hereinbefore mentioned, and all arrears thereof then remaining due and unpaid, and all costs, charges, damages, and expenses whatsoever, to be sustained or occasioned by non-payment of the same annuity, and the same yearly payment or sum may be fully paid and satisfied.

FURTHER
WITNESS.
Appointment of
a receiver.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said recited agreements on the part of the said (*grantor*), and for better securing the punctual and regular payment of the said annuity or yearly sum of £ , and also of the said yearly sum of £ , during the time or period, and for the purposes aforesaid, HE the said (*grantor*), with the privity, consent, and approbation, and at the express request of the said (*grantee*), testified by his executing these presents, hath made, ordained, constituted, and appointed, and by these presents doth make, ordain, constitute, and appoint the said (*receiver*) his receiver, agent, and attorney, in the name of him the said (*grantor*), or otherwise from time to time to ask, demand, collect, and receive, of and from the several lessees, tenants, or occupiers of all or any part or parts of the said several premises hereby charged with the payment of the said annuity or yearly sum of £ , and also of the said yearly sum of £ ,

during the time or period and for the purposes aforesaid the yearly or other rents, issues, and profits of the same several premises and every part thereof, when and as the same shall become due and payable, and to liquidate, adjust, and settle all accounts relating to the same; and upon payment thereof or of any part thereof, or any balance due in respect thereof, to make and give proper and effective acquittances and discharges for the same, and in case of non-payment thereof or any part thereof, to take and use such lawful remedies by action, suit, distress, or otherwise, for the

CHARGE.

Annuity.

Application of
rents, &c.

recovery of the same, as shall be thought requisite or expedient in that behalf, and for all or any of the purposes aforesaid to nominate and appoint a substitute or substitutes, and at pleasure to revoke such appointment, and generally to do, perform, and execute all other acts, matters, and things which shall be necessary or deemed expedient for receiving, collecting, and getting in the same rents, issues, and profits or any part thereof, as fully and effectually to all intents and purposes as the said (*grantor*) might or could do in his own person. AND it is hereby agreed and declared by and between the said parties to these presents, that all and every sum and sums of money, rents, issues, and profits which shall be received by the said (*receiver or attorney*) in pursuance of these presents, after deducting thereout a reasonable compensation and allowance for his trouble and expenses in collecting and recovering the same, not exceeding the sum of one shilling in the pound upon the gross amount of the monies so to be received, shall be applied in the first place in paying, satisfying, and discharging all arrears, if any, of the several yearly rents of the said sum of £ , by the hereinafore in part recited indenture of lease reserved as of taxes, rates, assessments, and impositions due and payable for or in respect of the said several premises, and also of the said annuity of £ , charged thereon by the said last will and testament of the said (*testator*) as hereinbefore mentioned, and in the next place in payment and satisfaction unto the said (*grantee*), his executors, administrators and assigns, of the said annuity or yearly sum of £ hereby and by the said warrant of attorney secured as aforesaid, at the respective times and in manner hereinbefore and in the said warrant of attorney mentioned and appointed for payment thereof, and all arrears of the same annuity which shall for the time being remain due: and also in paying to or placing in the hands of the said (*grantee*), his executors, administrators or assigns, the said yearly sum of £ during the continuance thereof at the time or times and in the manner hereinbefore and in the said warrant of attorney also mentioned and appointed for payment thereof, and all arrears of the same yearly sum which shall for the time being remain due or unpaid: and also in payment or discharge of the several other sums of money, costs, charges, damages and expenses which shall from time to time be raiseable under or by virtue of the said warrant of attorney or by virtue of these presents. AND that the clear residue or surplus of such monies, rents and profits so to be received shall be accounted for and paid over unto the said (*grantor*) or his assigns. AND the said (*receiver or attorney*) doth hereby, for him-

CHARGE.

Annuity.

Covenant by receiver duly to apply.

Grantor will not vacate receiver's authority:

will appoint a new receiver on death:

in default trustee may appoint.

self, his heirs, executors and administrators, covenant, promise and agree with and to the said (*grantor*) and his assigns, that he the said (*receiver or attorney*) shall and will, from time to time, duly and punctually pay and apply, in manner, and for the several intents and purposes aforesaid, all such sum and sums of money as shall be received or collected by him the said (*receiver or attorney*), or his substitute or substitutes, under or by virtue of the power or authority hereinbefore contained. AND the said (*grantor*) doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said (*grantee*), his executors, administrators and assigns, that he the said (*grantor*) or his assigns, shall not nor will at any time during the continuance of the said annuity hereby and by the said warrant of attorney secured as aforesaid, without the consent in writing of the said (*grantee*), his executors, administrators and assigns, first had and obtained for that purpose, revoke, alter or make void the powers or authorities hereby given to the said (*receiver or attorney*), or to be given to any future receiver to be appointed as hereinafter mentioned, nor do, commit or suffer any act, matter or thing whereby the said (*receiver or attorney*), or any such future receiver, may be obstructed or interrupted in or prevented from collecting or receiving the rents, issues and profits of the said several leasehold premises, or applying the same in manner and for the purpose aforesaid: AND further, that if the said (*receiver or attorney*), or any future receiver to be appointed as hereinafter mentioned, shall at any time during the continuance of the said annuity of £ happen to die, or shall neglect, refuse or become incapable to act in the execution of the said office or employment of a receiver, or shall make default in the application of the monies to be received by him or them in manner aforesaid, then and in every such case he the said (*grantor*) or his assigns shall and will duly constitute and appoint such other proper person to collect, receive and apply the said rents, issues and profits in manner and for the purposes aforesaid as the said (*grantee*), his executors, administrators and assigns, shall from time to time nominate in that behalf: AND also that if he the said (*grantor*) or his assigns shall in any such case refuse or neglect so to do for the space of fourteen days next after such nomination as last aforesaid, then and so often it shall and may be lawful to and for the said (*grantee*), his executors, administrators or assigns, to constitute and appoint some fit person to receive, collect and apply the said rents, issues and profits in manner and for the purposes aforesaid, with such reasonable salary for his care, trouble and expenses as he or they shall think fit.

PROVIDED NEVERTHELESS, and it is hereby expressly declared and agreed, that the said (*receiver or attorney*), or any future receiver to be from time to time appointed as aforesaid, shall not enter into the receipts of the rents, issues and profits of the said several leasehold premises hereby charged with the payment of the said annuity of £ , and the said yearly payment or sum of £ during the term or period, and for the purposes aforesaid, or otherwise interfere or intermeddle therewith, unless and until the same annuity, or some part thereof, or the same yearly payment, or some part thereof, shall be in arrear and unpaid for the space of twenty-eight days next after some or one of the days or times hereinbefore appointed for payment thereof respectively, any thing hereinbefore contained or implied to the contrary in anywise notwithstanding. AND it is hereby also declared and agreed, that the said (*receiver or attorney*), his executors, administrators or assigns, and such future receiver to be appointed as aforesaid respectively, shall not be answerable or accountable for any more monies than they respectively shall actually receive, nor for any misfortune, loss or damage which may happen in or about the execution or performance of the trusts, powers and authorities in them respectively vested or reposed, except the same shall happen through their respective wilful neglect or default, and that they respectively shall and may, out of the trust monies which shall come to their respective hands in the first place, deduct and retain to, and reimburse themselves respectively, all such costs, charges, fees, poundages and expenses as they respectively shall pay, sustain, expend or be reasonably entitled to, in or about, or by reason of the execution and performance of the trusts, powers and authorities aforesaid, or in relation thereto. AND (1) the said (*grantor*) doth hereby, for himself, his heirs, executors and administrators, also covenant and agree with the said (*grantee*), his executors, administrators and assigns, in manner following, (that is to say) that the said hereinbefore recited indenture of lease is a good, valid and effectual lease of and for the premises therein comprised, and thereby granted and demised, and not forfeited, avoided or avoidable; and that the yearly rent reserved and made payable by the same indenture of lease, and all taxes, rents and assessments for or in respect of the same leasehold premises, and also the said annuity of £ by the said will

CHARGE.

Annuity.

Receiver not to act till arrears incurred.

Not to be answerable for accidental losses.

Covenant by grantor for title, &c.

(1) If the premises be freehold or copyhold these covenants for the title, &c. must of course be made to accord; as to which, if freeholds, see *ante*, Vol. I. p. 316.; if copyholds, *post*. COVENANT.

CHARGE.Annuity.

Power to grant annuity.

Further assurance.

of the said (*testator*) given as aforesaid to the said A. B. have been respectively paid and discharged, and the covenants and agreements in the said indenture of lease contained have been duly performed and kept up to the day of the date of these presents: and that he the said (*grantor*) shall and will, during the continuance of the said annuity of £ hereby and by the said warrant of attorney secured as aforesaid, well and truly pay the said several annuities, rents, taxes and assessments, and annuity of £ , and perform the covenants and agreements in the said indenture of lease reserved and contained. AND also that he the said (*grantor*) now hath in himself good right, full power, and lawful and absolute authority to charge the said annuity of £ , and also the said yearly payment of £ , during the term or period, and for the purposes aforesaid, and the arrears thereof respectively, and the said powers and remedies for recovering and repelling the payment thereof respectively, upon all and singular the said leasehold premises hereinbefore mentioned, and hereby charged therewith: AND further, that he the said (*grantor*) and all other persons lawfully and rightfully claiming, or who shall or may have or rightfully claim, any estate, title, trust, charge or interest, either at law or in equity, in, to, upon or out of the said leasehold premises hereby charged with the payment of the said annuity of £ , and of the said yearly sum of £ , during the term or period, and for the purpose aforesaid, or the arrears thereof respectively, or any of the same leasehold premises, or any part thereof respectively, by, through, from or under or in trust for him, or by, from, through or under the said (*testator*), his late father, deceased, or with or through their or either of their means, default, consent, privity or procurement, except as to the encumbrances aforesaid, as mentioned in the said recited will, shall and will from time to time, and at all times during the continuance of the same annuity, at the request of the said (*grantee*), his executors, administrators or assigns, but at the costs and charges of him the said (*grantor*), make, do and execute, or cause or procure to be made, done and executed, all such acts, deeds, matters and things in the law whatsoever, for the better or more satisfactorily subjecting and charging the same leasehold premises and every part thereof, to and with the payment of the said annuity of £ and said yearly sum of £ during the term or period, and for the purpose aforesaid, and of all arrears of the same annuity and yearly sum respectively, or either of them, as by him the said (*grantee*), his executors, administrators or assigns, or her or their counsel in law shall be reasonably advised and required:

AND further, that he said (*grantor*) shall and will at all times during the continuance of the said annuity or yearly sum of £

hereby and by the said warrant of attorney secured as aforesaid, insure or cause to be insured the leasehold premises, or such parts thereof as are capable of destruction or damage by fire, against accident by fire, in the principal sum of £ at least, in the

or such other public office or offices in London or Westminster as the said (*grantee*), his executors, administrators or assigns, shall from time to time require and direct, and shall and will from time to time produce the policy or policies of such insurance, and all receipts for premiums thereon, unto him or them, at his or their request; and in case the same premises, or any of them or any part thereof, shall happen to be burnt down or damaged by fire, shall and will forthwith apply the sum or sums of money to be recovered on such policy or policies, in rebuilding or repairing and reinstating the same; and that in case at any time during the periods last aforesaid the said (*grantor*) shall neglect to insure the said premises in the manner aforesaid, or to produce the said policy or policies and receipts, or either of them, it shall and may be lawful to and for the said (*grantee*), his executors, administrators or assigns, to insure the same premises in or for the same or any less sum, and for any such term as he or they shall think proper; and that all sum and sums of money which shall be paid by him or them in making or keeping on foot any such insurance, together with legal interest thereon from the time of advancing the same, shall, to the extent of the sum of £ , but not further (1), be a charge

and chargeable upon the said leasehold premises, and shall or may be raised, paid, reimbursed and deducted from and out of the rents and profits thereof: AND also that he the said (*grantor*) shall and will, at any time or times and from time to time hereafter, at the request and expense of the said (*grantee*), his executors, administrators or assigns, attend in person at the Assurance Office, or any other public office or offices in London or Westminster for insurances on lives, and transmit to the said office or offices all necessary and other vouchers and certificates which may be reasonably required, of the state of the health of the said (*grantor*), and also notice of any change of his present or any future residence; and also

CHARGE.

Annuity.

Grantor will keep premises insured.

Grantor will appear at Life Assurance Office.

(1) It might be doubted if the sum were not limited to a given amount, whether it might not subject the deed to the stamp duty payable for an indefinite sum, see *post*. Vol. III. "STAMP." Stamp.

CHARGE.

Annuity.

do and cause to be done, and permit and suffer any other act, matter or thing which shall or may be necessary or reasonably required, to enable the said (*grantee*), his executors, administrators or assigns, at his or their own costs and charges, to effect and keep on foot one or more policy or policies of insurance upon the life of the said (*grantee*) for any sum or sums of money not exceeding in the whole the sum of £ (the consideration for the annuity): AND further, that in case the said (*grantor*) shall at any time hereafter be minded or intend to go upon or beyond the seas, he the said (*grantor*) shall and will give previous notice of his intention in that behalf unto the said (*grantee*), his executors, administrators or assigns, and shall and will, upon demand, reimburse and repay, or cause to be reimbursed to him or them, all such extraordinary premiums, fees and expenses whatsoever as he or they shall or may pay, expend, or be put unto, in or about effecting, renewing, or keeping on foot any such policy or policies of insurance as aforesaid, by reason or in consequence of the said (*grantor*) going upon or beyond the seas as aforesaid; and in default thereof, the same shall be a charge upon the secured premises, in like manner as any premium or sum to be paid by the said (*grantor*) for insuring the said premises against loss by fire, as is hereinbefore charged thereupon, to an extent not exceeding, together with the last mentioned sum, the sum of £ , but not further (1): And it is hereby further declared and agreed, by and between the parties to these presents, that it shall not be necessary for the said (*grantee*), his executors, administrators or assigns, to revive or cause to be revived the said judgment, or do any act, matter or thing to keep the same on foot, notwithstanding the same judgment shall be entered of record for the space of one year or upwards; and that the said (*grantor*), his heirs, executors or administrators shall not nor will have or take, or by any ways or means whatsoever attempt to have or take any advantage of the want of the said judgment being revived or kept on foot, and that if he or they shall attempt so to do by action, motion, or other legal proceeding whatsoever, this present agreement shall or may be pleaded or shewn in lieu thereto, any rule or practice of the courts thereof in anywise notwithstanding. PROVIDED NEVERTHELESS, and it is hereby lastly agreed and declared by and between the said parties to these presents, that in case the said (*grantor*) shall at any time hereafter during the continuance of the said annuity of £ hereby and

Judgment need
not be revived.

Power of re-
purchasing the
annuity.

(1) See *ante*, p. 269, n. (1).

CHARGE.

Annuity.

by the said warrant of attorney secured as aforesaid, be desirous of repurchasing the same annuity, and of such his desire shall give three calendar months' notice in writing to the said (*grantee*), his executors, administrators or assigns, and shall at the expiration of the said notice well and truly pay, or cause to be paid unto the said (*grantee*), his executors, administrators or assigns, the sum of £ of lawful money of Great Britain, as the consideration for such repurchase, or in lieu of such notice, shall well and truly pay or cause to be paid unto the said (*grantee*), his executors, administrators or assigns, the amount of one quarterly payment, at the consideration of the same annuity, in addition to the sum of £ as the consideration for such repurchase, together with all arrears of the said annuity then due, including a proportionate part of the growing payment thereof computed to the time of such repurchase; and also do and shall pay, satisfy and reimburse all such costs, charges and expenses as shall or may have been incurred or sustained by reason or in consequence of any default in payment of the same annuity, or in or about the exercise or execution of all or any of the trusts, powers and authorities hereby declared and created for securing and enforcing the payment and recovery thereof, then and in that case the said (*grantee*), his executors, administrators and assigns, shall and will accept and take the said sum or sums of £ as and in full for the price or consideration of such repurchase of the said annuity or yearly sum of £ hereby and by the said warrant of attorney secured as aforesaid, and thereupon the same annuity and the covenants hereinbefore contained, and the several trusts, powers and authorities hereby declared and created for securing the payment thereof, and all other securities for the same annuity, shall respectively thenceforth cease and determine; and the said (*grantee*), his executors, administrators or assigns shall thereupon, at the request and expense of the said (*grantor*), acknowledge satisfaction on the record of the judgment to be entered up under the said recited warrant of attorney, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. IN WITNESS, &c.

CHARGE.

Annuity.

Rider (A).

Opinions on the preceding Precedent.

Opinions on the
above case.

After the preceding charge had been made under the opinion of a gentleman at the bar, a question arose as to its validity by reason of the clause of forfeiture annexed to the bequest in the will on alienation (see *ante*, p. 257.) ; upon which the following opinions were given on an application by the grantor for obtaining a further sum upon the premises.

The opinion of Mr. B——.

I am of opinion Mr. ——— cannot make a satisfactory title. The case of *Doe v. Hawke*, 2 Anst. 481, seems to be an authority to support a conditional limitation, like the present of a leasehold ; and I infer from the case of *Brandon v. Robinson*, 18 Ves. 429, that where there is a gift over in abridgement of the estate first given, that may take effect, on breach of a condition against alienation. I would not, however, be understood to give a positive opinion on the subject ; and see Mr. Butler's note in his edition of *Fearne*, p. 249. But if the question be doubtful, a mortgagee, who ought not to incur any risque, cannot be advised to accept the title.

Lincoln's Inn, Jan. 7, 1824.

The opinion of Mr. H——.

Two questions arise out of P. D.'s Will.

1. Whether the condition, in restraint of alienation, is valid in law ; and if so,
2. Whether what is proposed to be done would be a breach of it.

I think this too doubtful a case for a prudent party to act upon. According to the letter of the text in Co. Litt. 223. a. the condition is bad ; but I question whether the passage is not to be understood of an indefinite restraint of alienation, as it is elsewhere settled, that alienation may be restrained for a certain period, 2 Leon. 38 and 82. 3 Leon. 182 ; which is a ground for holding the condition in this case valid, because it imposes not a general and unlimited restraint on alienation, but one which is circumscribed in duration to the life of the first devisee, and it is within the limits allowed for executory devises.

CHARGE.Annuity.

If that be not so, I think that a charge of an annuity on the property would be a disposing of it within the words of the condition, and consequently a breach which would defeat the annuitant's title; 2 Leon. 82, 3 Leon. 182; and if not, that it would be a very unsafe security, and it would be no protection against an execution at the instance of a judgment creditor, who might seize the lease and sell it over the head of the grantee of the annuity.

Lincoln's Inn, 23 Jan. 1824.

Opinion of the present Editor.

I have perused the will of Mr. P. D., the draft of annuity deed granted to Mr. R., and the opinion of Mr. B. and Mr. H. thereupon; I could have wished to have had an opportunity of perusing the opinion I formerly gave upon Mr. D.'s will, that I might have examined the authorities in support of it, which in my present state of illness I am not able to search for.

The validity of the annuity resolves itself into three points, first, generally, whether a charge upon premises can be construed into a disposal of them; secondly, if it can, whether the particular deed in question be simply a charge or an alienation of them; and thirdly (which indeed might have been first considered), whether the condition in the will be in itself good or not.

1. Upon the first of these points I am clearly of opinion, that a mere charge of lands, according to the received legal as well as common acceptance of words, cannot be interpreted to mean a disposal of them—that a mortgage of the premises would have been a disposal of them, I entirely agree with Mr. B., because a mortgage is a conveyance and actual parting with the premises to the mortgagee, subject only to a reclaimer on certain conditions; but a charge upon is not a conveyance or parting with the premises, but only the imposition of a burthen upon them in the hands of the person charging; a charge, necessarily, implying the thing charged to remain in the possession of the person by whom the charge is made; and even supposing that a charge upon lands could be construed to operate as a transfer of them, yet the transferee would (subject only to the charge) be a trustee for the person charging, and the beneficial and substantial ownership still remain in him.

2. On the second point I am equally clear, that the annuity deed from Mr. P. H. D. to Mr. R., can operate as a charge only, and not a disposal of the premises bequeathed to him. This deed, after reciting the will of the testator, and particularly noticing the clause of forfeiture (by which it evidently appears that he did not intend to commit an act of forfeiture), states it to be the agreement of the parties that a fund should be raised

CHARGE.Annuity.

for securing the annuity by means of the premises, if default should be made personally by the grantor; that the premises should be chargeable, not absolutely *and at all events* but as a *collateral* and further security, only in case the other should fail. The purchase money for the annuity is moreover declared to be, as to a considerable part, for the purpose of putting the premises in repair.—The deed then proceeds to declare that the premises shall stand, remain, and be a security for, and chargeable with, the arrears of the annuity during its continuance; then follows the usual power of distress; but it is observable that there is no demise or parting with the premises to a trustee or otherwise, as in the common case of annuity deeds, nor is there even any power for the grantee to enter and receive the rents of the premises, should the annuity be in arrear: in what respect then can the premises be said to parted with or disposed of?

3. On the third and last point I am strongly disposed to think, that the condition annexed to the bequest in Mr. D.'s will, is in itself wholly void, for per Lit. sec. 360. "if a feoffment be made upon this condition that the feoffor shall not alien to any, this condition is void," and Lord Coke, in his commentary upon this section, adds, "and so if a man be possessed of premises for years, or of a horse or any other chattel real or personal, and give or sell his whole property therein upon condition that the donee or vendee shall not alien the same, the condition is void;" neither of which positions has lord Nottingham, or either of the later learned editors of those commentaries, attempted to controvert: I must therefore repeat the opinion I have before given, that no forfeiture has been incurred by Mr. D. of the premises bequeathed to him, and that the annuity granted to Mr. R. is well secured upon them.

Lincoln's Inn, Feb. 3, 1824.

N.B. The question was afterwards referred to one of the Masters in Chancery, on a bill filed against the annuitant, and the Master reported his opinion to be that no forfeiture had been incurred, and consequently that Mr. D. was enabled to make a good title to a new grantee; which opinion was acquiesced in.

CHARGE.

*Church Rates
(building
church).*

No. CCLXXVIII.

**A Charge by Churchwardens upon the Church Rates, of a sum borrowed for Building a Chapel or Church (1).*

WHEREAS his Majesty's commissioners for building new churches, acting under the authority of and in pursuance of the provisions contained in the several acts passed for the building and promoting the building of churches in populous parishes, or A. B. of , and C. D. of , have [*recite shortly the loan and circumstances, and terms, &c.*] WE THEREFORE or I A. B. being of the church [*or chapel*] wardens of [*describe them*], Do by these presents charge the said [*describe the place or parish*] with the said sum of £ , and with the re-payment thereof according to the terms and conditions above stated; and do hereby, in pursuance of the provisions of the said acts, or some or one of them, declare that the said sum of £ is and shall continue to be chargeable and charged upon the church [*or chapel*] rates now raised or hereafter to be raised in the [*parish, &c.*] until the said sum of £ , together with the interest, is fully re-paid according to the terms and conditions above set forth. WITNESS, &c.

(1) By stat. 3 Geo. 4. c. 72. (sect. 5.) sums lent in pursuance of that act for the building of any church or chapel shall be chargeable upon the church rates of the parish or place, or upon rates to be created for that purpose; and the church or chapel wardens of such parish or place are authorised and required to declare every such loan to be chargeable and charged thereupon, by any instrument to the effect of that above given, or as near thereto as the nature of the case will admit or the circumstance of the case shall require. 3 Geo. 4. c. 72.

* * * It is declared by the act of 3 Geo. 4. c. 72. that "no deed of gift or grant, security, contract, agreement, deed, conveyance, or other in- No stamp.

CLAREN.

*Church Rates
(building
church).*

strument made for the purposes of that act or the acts therein recited (58 Geo. 3. c. 46. 59 ib. c. 134.), or for any other of the purposes, or under any of the provisions of either of those acts, or for carrying into execution any of the powers, authorities, regulations, purposes, or provisions therein mentioned or contained, shall be subject to any of the duties upon stamped vellum, parchment or paper."

No. CCLXXIX.

**A Charge by way of Mortgage of County Rates for building or repairing a County Gaol or House of Correction (1).*

WE A. B. one of his Majesty's justices of the peace and chairman of the court of quarter-sessions of the peace for the county of, &c. [as the case shall be] holden at the day of C. D. and E. F. esquires, two other of his Majesty's justices of the peace acting for the said county, &c. and assembled in the said court, in pursuance of the power to us given by an act passed in the twenty-fourth year of the reign of his Majesty King George the Third, intituled, &c. [insert the title of the act], do hereby, in open court, mortgage and charge all the rates to be raised within the said county, &c. [as the case shall be], under the description of county rates by the laws now in being, with the payment of the sum of £ , which G. H. of hath proposed and agreed to lend, and hath now actually advanced and paid towards defraying the expenses of building, repairing, &c. [as the case shall be] the house of correction for the said county, &c. AND we do hereby confirm and establish the same unto the said G. H., his executors, administrators, and assigns, for securing the re-payment of the sum of £ and the interest agreed upon for the same, after the rate of

(1) By the 24 Geo. 3. c. 54. relative to the repairing and building of county gaols (sect. 9.), and ib. c. 55. relative to houses of correction (sect. 2.), the justices (assembled at the quarter-sessions) are empowered to borrow money upon credit of the county rates, from time to time, for the purposes of those acts, by an instrument in the form and to the effect of that above given, any sums of money not less than £50 nor exceeding £100 each time, at legal, or lower interest, as to them or the major part of them (such major part not being less than five) shall seem expedient. 24 Geo. 3. c. 54 and 55.

CHARGE.County Rates
(building grant).

per centum per annum ; and do order the treasurer for such county or place, or other person [*as the case shall require*], to pay the interest of the said sum of £ half-yearly, as the same shall become due, until the principal shall be discharged pursuant to the directions of the said act.

CHARGE.County Rates
(lunatic asy-
lum).

No. CCLXXX.

**A Charge upon County Rates for building a House of Reception for Lunatics (1).*

WE A. B. one of his Majesty's justices of the peace and chairman of the court of quarter-sessions of the peace for the county, &c. [as the case shall be] holden at the day of , C. D. and E. F. esquires, two other of his Majesty's justices of the peace acting for the said county, &c. and assembled in the said court in pursuance of the powers to us given by an act passed in the forty-eighth year of the reign of his Majesty King George the Third, intituled, &c. [here insert the title of the act], do hereby, in open court, mortgage and charge all the rates to be raised within the said county, &c. [as the case shall be] under the description of county rates by the laws now in being, with the payment of the sum of £ , which G. H. of , hath proposed and agreed to lend and hath now actually advanced and paid, towards defraying the expenses of purchasing lands, for building, repairing, &c. [as the case shall be]

(1) By the stat. 48 Geo. 3. c. 96. it is provided (sec. 8.), that when it shall appear by the report of the visiting justices that the charge of carrying that act into execution for the purposes therein mentioned, will exceed one half of the amount of the ordinary annual assessment for the county rate (computing upon an average of the last five years), the justices assembled at the quarter-sessions may borrow upon the credit of the said rates, by an instrument in the form or to the effect of that here given, any sum not less than £50 at any one time, at legal or lower interest, as to the major part of such justices (such major part being five at the least) shall appear necessary; and which instrument, signed by the chairman and two or more justices, shall be a sufficient security for the sums so borrowed and the interest thereof; and shall be assignable at pleasure by the mortgagee or his assignees, *toties quoties*, he signing his name on the back thereof. And sec. 10. directs that provision shall be made for payment of the monies borrowed out of the rates chargeable therewith, within a period not exceeding fourteen years.

CHURCH.County Rates
(lunatic asy-
lums).

the lunatic asylum of the said county, &c. [*or the united counties of &c. as the case shall be*]; and we do hereby confirm and establish the same unto the said G. H., his executors, administrators, and assigns, for securing the re-payment of the said sum of £ and interest for the same after the rate of per centum per annum, and do order the treasurer for such county, &c. or other person [*as the case shall be*] to pay the interest of the said sum of £ half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said act.

(Chairman).

(two Justices.)

CHARGE.

Debt.

No. CCLXXXI.

**A Charge (1) of a Bond-Debt on real Property by Indorsement on the Bond and deposit of title deeds.*

TO ALL TO WHOM IT MAY CONCERN, KNOW YE, that I the within named (*obligor*) having deposited the title deeds of or relating to my freehold and leasehold estates situated at, &c. for better securing the payment of the within mentioned sum of £ , Do hereby charge and make chargeable all and every my said freehold and leasehold estates with the payment of the said sum of £ and interest, at the time and in the manner in or by the condition of the within written bond mentioned for payment of the same. AND do also promise and agree for myself, my heirs, executors, and administrators, that I and them shall and will at the request of the within named (*obligee*), his executors, administrators, or assigns, make, do, and execute, at my or their expense, all such further acts, conveyances and assurances in the law as shall be requisite for the more effectually charging or making liable the said premises with the payment thereof in such manner as the counsel in the law of the said (*obligee*), his executors, administrators, or assigns, shall reasonably advise. As WITNESS my hand, this day of .

(1) See notes in No. CCLXXXVI. *post.* p. 300, also *ante*, *Mod. Charge. Prec.* Vol. I. p. 1, 3d Ed.

*** The *ad valorem* stamp, (if not exceeding £ 2) being impressed on Stamp. the bond accompanying the deposit of deeds, the common deed stamp only will be necessary upon the above instrument.—See *post.* Vol. III. "STAMP."

CHARGE.

Jointure.

No. CCLXXXII.

* *A Charge of an Annuity to an intended Wife by way of Jointure, by owners of the Inheritance* (1).

Recital of settlement of even date.

THIS INDENTURE made the day of , in the year of the reign, &c. and in the year of our Lord 18 .
 BETWEEN (*intended husband*) formerly of the Island of in the West Indies, but now of, &c. of the first part, (*intended wife*) of, &c. of the second part, and (*trustees*) of, &c. [trustees named and appointed on the part of the said (*intended wife*) for the purposes hereinafter expressed] of the third part. WHEREAS by indenture of settlement bearing or intended to bear even date with these presents, and made or expressed to be made between, &c. the said (*intended husband*) in consideration of a marriage then intended to be forthwith had and solemnized between the said (*intended husband*) and (*intended wife*), covenanted and agreed to charge and make chargeable, by indenture to bear even date therewith (meaning this present indenture) all and singular the messuages, lands, tenements, plantations, and hereditaments hereinafter particularly described, with the payment of an annuity or yearly sum of £ to the said (*intended wife*) during the term of her natural life, in case she should survive him the said (*intended husband*) her intended husband, by way of jointure and in lieu of dower. NOW THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration and contemplation of the said intended marriage, the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, promise, and agree with and to the said

WITNESS.
 That on marriage taking effect intended husband charges.

Plantations.

(1) The above charge was, it will be perceived, upon estates in the West Indies, but it is equally applicable, *mutatis mutandis*, to other hereditaments. See also other creations of Jointures, *ante*, Vol. I. Nos. C, CI. and *post*. "COVENANT."

CHARGE.

Jointure.

(*trustees*), their executors, administrators, and assigns, that in case the said intended marriage shall take effect, and in event of the said (*intended wife*) his said intended wife surviving him the said (*intended husband*), then and in such case all that and those the messuages, lands, tenements, plantations, and other the hereditaments of him the said (*intended husband*), situated and being in the Island of _____ in the West Indies, numbered _____, and called or known by the name of _____, and containing in the whole, by estimation, _____ acres of land or thereabouts, English measure; and also all negroes, slaves, horses, mules, and cattle of all kinds, and increase and progeny thereof respectively, together with all and every the rights, members, and appurtenances to the said plantations, hereditaments, estates, and premises belonging, shall immediately after the decease of him the said (*intended husband*) become, stand, and be charged and chargeable with, and subject and liable to the payment of an annuity or clear yearly sum of £ _____, of lawful money of the United Kingdom of Great Britain and Ireland, unto the said (*intended wife*) and her assigns, for the term of her natural life, and to be paid and payable at _____ in England aforesaid, by two equal half-yearly payments on the _____ day of _____ and the _____ day of _____ in every year, free and clear of all taxes, duties, payments, deductions, and abatements of every or any nature or kind soever, and the first payment thereof to be made (in full, as by computation from such of the said half-yearly days of payment as shall have happened next preceding his decease) on such of the said days or times of payment as shall happen next after the decease of the said (*intended husband*); and also a proportionable part of the said annuity or yearly sum of £ _____, from such of the said half-yearly days of payment as shall happen next before the decease of her the said (*intended wife*) up to the day or time of her decease. AND he the said (*intended husband*) doth by these presents, in the events aforesaid, charge and make chargeable all and singular the said messuages, lands, tenements, plantations, hereditaments, and premises, with the payment of the said yearly rent-charge or annual sum accordingly. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid and for the further securing the payment of the said annuity or yearly rent-charge of £ _____; and in consideration of the sum of five shillings of lawful money of England to the said (*intended husband*), paid by the said (*trustees*) upon the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged) HE the said (*intended husband*) hath granted, bargained,

FURTHER
WITNESS.
Demise of the
premises for a
term of years.

CHARGE.Jointure.

To hold to trustee from death of husband.

In trust to permit heirs, &c. of husband to receive rents, &c. till rent-charge in arrear.

And out of rents, &c. or by sale or mortgage to pay said arrears.

sold, and demised, and by these presents doth, at the request and nomination of the said (*intended wife*) (testified by her being a party to and executing these presents) grant, bargain, sell, and demise unto the said (*trustees*) all that and those the said messuages or tenements, lands, plantations, hereditaments, and premises hereinbefore charged and made chargeable with the payment of the said annuity or yearly rent-charge of £ , or expressed or intended so to be as aforesaid, together with all and singular the rights, members, and appurtenances whatsoever, to or with the said plantations and premises belonging or therewith enjoyed; and all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*intended husband*), in, to, or respecting the same or any of them, To HAVE AND TO HOLD the said messuages or tenements, plantations, lands, and all and singular other the hereditaments and premises hereby granted, bargained, sold, and demised, or expressed or intended so to be, unto the said (*trustees*), their executors, administrators, and assigns, from the day of the decease of the said (*intended husband*) (if the said (*intended wife*) his intended wife shall be then living) for the term of ninety-nine years then next ensuing, in case the said (*intended wife*) shall so long live, or any part of the said annuity or yearly rent-charge shall be then in arrear, without impeachment of waste; IN TRUST nevertheless to permit the heirs, executors, administrators, and assigns respectively, of the said (*intended husband*), to receive the rents and profits of the said hereditaments and premises until default shall happen to be made in payment of the said annuity or yearly rent-charge of £ , or some part thereof, at the times or in the manner hereinbefore appointed for payment thereof. AND upon further trust, that in case the same annuity or yearly rent-charge shall happen to be in arrear for the space of sixty days next after any of the days of payment whereon the same is so appointed to be paid as aforesaid (although the same shall not have been lawfully demanded), then and as often as the same shall happen, it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs, executors, and administrators respectively of the survivor, and they and each of them are and is hereby required by and from the rents, profits, and produce of the said hereditaments and premises, or by demising or selling the same or any part thereof, either absolutely or by way of mortgage for all or any part of the said term of ninety-nine years, or by such other ways or means as to them or him shall seem meet, to raise and levy all or any part or such sum of money as shall be sufficient to pay and

satisfy the said annuity or yearly rent-charge of £ , or so much thereof as shall be in arrear, together with all costs, charges, damages, and expenses attending the execution of the said trusts. AND in trust to pay over unto the heirs, executors, administrators, or assigns of the said (*intended husband*), or permit him and them to receive and take the residue or overplus of the said rents, profits, and produce of the same premises for his and their own use and benefit. AND it is hereby expressly declared that the receipt of them or of either of them the said (*trustees*), or of any other trustees or trustee who may hereafter be appointed or become trustees or a trustee in their or either of their place or stead, shall from time to time be a good and sufficient discharge to any mortgagee, purchaser, tenant, bailiff, attorney, agent, receiver, or other person or persons who shall or may advance or pay any money or other property under or by virtue of these presents, and he, they, or any or either of them shall not be liable to see to the application thereof or any part thereof, nor bound to enquire into the necessity or occasion of any such money or property being advanced, paid, raised, or levied; Provided always, nevertheless, and it is hereby declared by and between the said parties to these presents, that upon the decease of the said (*intended wife*) and full payment of all arrears of the said annuity or yearly rent-charge of £ , and all costs, damages, and expenses attending the execution of the aforesaid trusts, the said term of ninety-nine years, or so much thereof as shall then remain unexpired or undisposed of for the purposes aforesaid, shall cease and determine. AND the said (*intended husband*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree with and to the said (*trustees*), their executors, administrators, and assigns, that the heirs, executors, or administrators of him the said (*intended husband*) shall and will during the natural life of the said (*intended wife*), in case she shall survive him, well and truly pay unto or for the use and benefit of the said (*intended wife*), her executors, administrators, and assigns, the said annuity or yearly rent-charge of £ of lawful money of Great Britain, at the times and in the manner hereinbefore appointed for payment of the same, and according to the true intent and meaning of these presents, without making any deduction or abatement whatsoever therefrom or thereout. AND also that all and singular the messuages, lands, plantations, hereditaments, and premises so hereby charged with the payment of the said annuity or yearly rent-charge, shall at all times, during the continuance thereof, be subject to the entry and distress of the said (*intended wife*) her executors, ad-

CHARGE.

Jointure.

And surplus to
heirs, &c. of
husband.

Covenant by
husband that his
heirs, &c. will
pay the rent-
charge.

And that pre-
mises shall re-
main chargeable.

CHARGE.	
<i>Jointure.</i>	
That husband has right to charge.	ministrators, and assigns, and of her trustees and each of them, for the same, and the costs, damages, and expenses occasioned by any non-payment thereof. AND that he the said (<i>intended husband</i>) at the time of the sealing and delivery of these presents, hath in himself full, perfect, and absolute right and authority to grant the said annuity or yearly rent-charge of £ unto the said (<i>intended wife</i>), her executors, administrators, and assigns, and also to demise the said messuages, lands, plantations, hereditaments, and premises, unto the said (<i>trustees</i>), their executors, administrators, and assigns, in the manner aforesaid. AND further, that the lands, plantations, and hereditaments hereby made chargeable with the payment thereof are of the just and full value of £ , free of all reprisals and charges whatsoever. AND that it shall and may be lawful for the said (<i>intended wife</i>), her executors, administrators, and assigns, to have, take, and enjoy the said annuity, yearly rent-charge, or annual sum, for the term of her natural life, in case she shall survive the said (<i>intended husband</i>), and for the said (<i>trustees</i>), their executors, administrators, and assigns, to hold and enjoy the said plantations, hereditaments, and premises, for the said term of ninety-nine years, according to the true intent and meaning of these presents, without any claim or demand whatsoever by the heirs, executors, or administrators of the said (<i>intended husband</i>) or any other person whomsoever lawfully claiming under or in trust for him or any of his ancestors, other than subject to the same annuity or yearly rent-charge, and to all powers and remedies for recovery thereof; and that free and clear or otherwise by the heirs, executors, or administrators of the said (<i>intended husband</i>), protected and indemnified from and against all former and other estates, titles, charges, and incumbrances whatsoever. AND MOREOVER that he the said (<i>intended husband</i>) during his lifetime, and all persons claiming under or in trust for him or any of his ancestors from and after his decease, in case she the said (<i>intended wife</i>) shall be then living, shall and will from time to time and at all times during her natural life, at the reasonable request of the said (<i>intended wife</i>), but at the expense of the said (<i>intended husband</i>), his executors, administrators, or assigns, make, do, and execute all such further and other lawful and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, for the better or more satisfactorily granting and confirming the said annuity or yearly rent-charge of £ , unto the said (<i>intended wife</i>) for the term or period and in the manner aforesaid, and for the better or more satisfactorily demising and conveying the plantations, hereditaments, and premises expressed or intended to be
Premises are of a sufficient value.	
Quiet enjoyment.	
Free from incumbrances.	
Further assurance.	

hereby demised unto the said (*trustees*), their executors, administrators, and assigns, for the remainder of the said term of ninety-nine years which shall be then unexpired, and otherwise charging the same hereditaments and premises with the payment thereof, as the said (*intended wife*) or any of her trustees or trustee or assigns, or her or their counsel in the law shall advise and require. AND the said (*intended husband*) doth hereby further covenant, grant, declare, and agree with and to the said (*trustees*), their heirs, executors, administrators, and assigns, that in case the messuages, lands, plantations, hereditaments, and premises hereinbefore described to be situated in the Island of _____ aforesaid, or any part thereof, shall at any time hereafter, during the lifetime of the said (*intended wife*), his intended wife, be destroyed by earthquake, storm, or tempest, or be ceded to any foreign power, or the title or possession of him the said (*intended husband*), or the charge and demise hereby made or mentioned or intended to be made of or upon the same, shall in or by any other manner or for any other cause be defeated, impeached, or rendered or become unavailable, then and in such case he the said (*intended husband*), his heirs, executors, or administrators shall and will, at his or their own costs and charges, in all things, upon request made to him or them in writing for that purpose under the hands or hand of the trustees or trustee of these presents for the time being, or the hand of her the said (*intended wife*) or of her assigns, well and effectually charge and assure the said annuity or yearly rent-charge of £ _____, so to be paid and payable unto her the said (*intended wife*) during the term of her natural life as aforesaid, upon some other lands and hereditaments or other property of ample and sufficient value to be situated or be within the jurisdiction and cognizance of the counties or some or one of the counties of that part of the United Kingdom of Great Britain and Ireland called England, in such manner and form as the person or persons so requiring the same, or their or his counsel in the law, being of the degree of a barrister, shall require or advise. AND THIS INDENTURE FURTHER WITNESSETH, that to the intent that these presents may be duly registered, inrolled, and recorded in the proper office or offices appointed for that purpose in the said Island of _____, and take effect according to the laws respecting assurances of estates and interests, he the said (*intended husband*) hath made, nominated, constituted, and appointed, and by these presents doth make, nominate, constitute, and appoint, and in his place and stead put and depute (*trustees for registering deed*) both of the Island of _____ aforesaid, esquires, jointly and severally to be

CHARGES.

Jointure.

If the plantations destroyed or ceded, lands in England to be charged in lieu.

FURTHER WITNESS.

Power of attorney to register.

CHARGE.

Jointure.

his true and lawful attornies and attorney for him the said (*intended husband*), and in his name or otherwise, and at his costs and expense, to appear before the registrar of deeds of the said Island for the time being, or his lawful deputy or deputies, or other officer or officers or person or persons competent for this purpose, and to acknowledge the present indenture and also a certain bond or obligation in writing of even date herewith under the hand of the said (*intended husband*), as and for the act and deed and acts and deeds of the said (*intended husband*), and his name and seal hereunto and thereunto subscribed and affixed, to be the proper hand writing and seal and proper hand writings and seals of him the said (*intended husband*), and further for him the said (*intended husband*) and in his name or otherwise at his costs and expense to do, perform, and perfect all other acts, deeds, matters, and things whatsoever which shall be requisite or expedient in order to the registering, inrolling, and recording these presents and the said bond or obligation in the registry or other proper office or offices in the said Island of _____, or otherwise rendering the same respectively valid and effectual according to the laws and customs of the said Island for the time being. IN WITNESS, &c.

CHARGE.

Mortgage
(estate for life).

No CCLXXXIII.

**A Charge by a Tenant for life, of a sum of money upon Lands
by way of Mortgage, in virtue of a power.*

THIS INDENTURE made the day of in the year
of the reign of, &c. and in the year of our Lord 18 , BETWEEN
(*the mortgagor*) of, &c. of the first part, (*the mortgagee*) of, &c. of the
second part, and (*a trustee*) of, &c. of the third part. WHEREAS
by indentures of lease and release bearing date respectively on or
about the day of , purporting to be a settlement
made in contemplation of a marriage then intended, and which soon
afterwards took effect, between, &c. the release being of parts,
and made or expressed to be made between, &c. the several mes-
sages, &c. hereinafter described, were granted, released, and con-
veyed to the use of the said (*mortgagor*) and his assigns, for and
during the term of his natural life, without impeachment of waste, with
remainder to trustees therein named and their heirs, during the life
of the said (*mortgagor*), upon trust to preserve contingent remainders
thereinafter created, with remainders over as therein mentioned.
AND in the said indenture of release is contained a proviso, declara-
tion, and agreement, that, &c. [*Recite verbatim the power enabling
the mortgagor to raise the sum by way of mortgage.*] AND
WHEREAS the said (*mortgagee*) has this day lent unto the said
(*mortgagor*) the sum of £ , and he is desirous in execution
of the aforesaid power to charge the said messuages, lands, tenements,
and hereditaments, with the payment thereof with interest, in the
manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH,
that for effectuating the purposes aforesaid, and for and in considera-
tion of the sum of £ , of lawful money of the United King-
dom of Great Britain and Ireland, to him in hand well and truly paid
by the said (*mortgagee*), as is testified by the receipt or acknow-
ledgement thereof hereupon indorsed, he the said (*mortgagor*), in
pursuance and by force and virtue of the said power and authority,
in and by the said hereinbefore in part recited indenture of release

INDENTURE
WITNESS.

CHARGE.*Mortgage
(estate for life).*Mortgagor
charges premi-
ses with the sum
of £

reserved or given to him, and in exercise thereof, and also in pursuance and by force and virtue, and in exercise of all and every other power and powers, authority and authorities, in anywise enabling him thereunto, hath charged and made chargeable, and by this present deed or writing, under his hand and seal, attested or intended to be attested by two credible persons, whose names are intended to be hereon indorsed, as witnesses to the due execution hereof, doth charge and make chargeable all and singular the messuages, lands, tenements, and hereditaments, by the said hereinbefore in part recited indenture of release of the day of last, granted and demised as aforesaid, with all and singular the rights, members, and appurtenances to the same belonging, with the payment of the full sum of £ , of lawful money of the United Kingdom of

Great Britain and Ireland, unto the said (*mortgagee*), his executors, administrators, and assigns, upon the day of , now next ensuing, with interest for the same from henceforth, after the rate of five per centum per annum, until repayment thereof. AND

**FURTHER
WITNESS.**

THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore mentioned, and for better securing the payment thereof, with interest for the same after the rate aforesaid, [and for and in consideration of the sum of five shillings, of lawful money aforesaid, to the said (*mortgagor*) in hand paid by the said (*trustee*), at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,] he the said (*mortgagor*) in further pursuance, and by force and virtue of the said power and authority so reserved or given to him as aforesaid, and in further exercise thereof, and likewise in pursuance and by force and virtue of all and every other power and powers, authority and authorities, in anywise enabling him thereto, hath granted, bargained, sold, and demised, and by this present deed or writing, so executed and attested as aforesaid, doth grant, bargain, sell, and demise unto the said (*mortgagee*), his executors, administrators, and assigns, all and singular the messuages, lands, tenements, and hereditaments hereinbefore expressed to be hereby charged and made chargeable with the payment of the sum of and interest as aforesaid, with their and every of their rights, members, and appurtenances, and all the estate, right, title, and interest of him the said (*mortgagor*) in, to, or concerning the same, &c. TO HAVE AND TO HOLD the said messuages, lands, tenements, and all and singular other the hereditaments hereinbefore expressed to be hereby demised, with their and every of their rights, members, and appurtenances, unto the said (*mortgagee*), his executors, administrators, and assigns, from the making of these presents,

Demise of same
premises for a
term.

for and during, and until the full end and term of years, from thence next ensuing and fully to be complete and ended, without impeachment of or for any manner of waste. PROVIDED ALWAYS nevertheless, and these presents are upon this express condition, that if the person or persons who shall for the time being be entitled to the freehold and inheritance of the hereditaments hereby demised, expectant upon the determination of the said term of years, do and shall well and truly pay or cause to be paid unto the said (*mortgagee*), his executors, administrators, and assigns, the sum of £ , of lawful, &c. on the day of now next ensuing, with interest thereon, from thenceforth, after the rate of five per cent. without any deduction or abatement out of the same, or any part thereof respectively, for or in respect of any taxes, charges, assessments, payments, or other matter, cause, or thing whatsoever, then and in such case, and at all times from thenceforth, the grant and demise hereby made, and the said term of years hereby created, shall cease, determine, and be absolutely void to all intents and purposes whatsoever, any thing herein contained to the contrary thereof in any wise notwithstanding. AND, &c. [*add covenants by mortgagor that he has not executed his power, has power to charge, &c.*] (1)

CHARGE.

*Mortgage
(estate for life).*

Proviso of redemption.

(1) See *ante*, p. 252.

CHARGE.

Mortgage
(equity of re-
demption).

No. CCLXXXIV.

**A Charge on the Equity of Redemption by mortgagor where an additional Sum is advanced by the original Mortgagee.*

To be indorsed on the Mortgage Deed.

Recital of fur-
ther advances.

TO ALL TO WHOM THESE PRESENTS SHALL COME (1). WHEREAS the within mentioned principal sum of £ still remains due and owing from the within named (*mortgagor*) to the within named (*mortgagee*), but all interest for the same hath been paid and satisfied up to the day of last past. AND WHEREAS the said (*mortgagee*) hath advanced and lent unto the said (*mortgagor*), on the day of the date hereof, the further sum of £ (the receipt of which the said (*mortgagor*) doth hereby acknowledge, and thereof, &c. &c.) and the said (*mortgagor*) hath entered into a bond or obligation under his hand and seal, bearing even date with these presents, to the said (*mortgagee*) in the penal sum of £ , with a condition thereunder written, for making void the same upon re-payment on the day of next, of the said last mentioned sum of £ , with interest for the same, at the rate of £5 for each £100, by the year, as in and by the said recited bond or writing obligatory, reference being thereunto had, may more fully appear. [*Or if so*, WHEREAS the within named (*mortgagee*) hath since the execution of the written indenture, lent and paid or agreed and become liable to lend and pay, unto or for the within mentioned (*mortgagor*) various other sums of money beyond the sum of £ mentioned to be secured by the within written indenture.] NOW KNOW YE, that for the better securing unto the said

WITNESS.

Indenture.

(1) Or it may be by indenture. As a general rule it may be observed, that wherever a deed contains *reciprocal* covenants, &c. rendering it necessary that each party should have a counter-part of the deed in his possession, in order to furnish him with the means of redress against the other in case of breach, the deed should be by *indenture*, but in all other cases it may be by *deed poll*.

(*mortgagee*), his executors, administrators and assigns, the repayment of the said sum of £ [or such further and other sums of money, beyond the within mentioned sum of £ as the said (*mortgagee*) hath already paid, or at any time hereafter may pay or advance unto or for the said (*mortgagor*) not exceeding the sum hereinafter mentioned] the said (*mortgagor*) doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said (*mortgagee*), his executors, administrators and assigns, that all and every the [freehold, copyhold and leasehold] messuages, lands, tenements and hereditaments, and all and singular other the premises, in or by the within written indenture granted and released, or otherwise assured or expressed so to be, unto the said (*mortgagee*), his executors, administrators and assigns, by way of mortgage, with their and every of their appurtenances, and every part and parcel thereof respectively, shall henceforth stand charged and chargeable with (1) and continue and be a security unto him the said (*mortgagee*), his executors, administrators and assigns, not only for the within mentioned sum of £ , and the interest to become due for the same, but also for the said sum of £ , [or for all and every sum and sums of money which, since the day of the date of the within written indenture, has or have been lent or advanced, or which at any time or times hereafter shall or may be lent, advanced or paid unto or for the said (*mortgagor*) by the said (*mortgagee*) or which shall or may be due and owing upon a balance or balances of account between them, or which he the said (*mortgagee*), his heirs, executors or administrators, is or are, shall or may, at any time or times hereafter become or be bound or liable to pay or advance unto or for the said (*mortgagor*), his executors, administrators or assigns, not exceeding, in the whole, the sum of £ (2),] together with interest for the same, after the rate of £5 for every £100 by the year, from the time any such sum or sums shall be, or have been, so lent, advanced or paid, until full payment and satisfaction thereof, and of all costs and charges, damages and expenses, which the said (*mortgagee*), his heirs, execu-

CHARGE.

Mortgage
(*equity of redemption*).

Mortgagor
charges the
mortgaged pre-
mises with pay-
ment thereof.

(1) In a mortgage by way of further charge no new conveyance is, of course, necessary to be made to the mortgagee, as the estate is already vested in him by the first mortgage: all therefore that is requisite is, for the mortgagor to declare and agree that the mortgaged premises shall stand charged with the last sum advanced, as well as the former. Further sum.

(2) The amount of the sum for which the mortgage is intended to be a security must be limited, on account of the *ad-valorem* stamp. Sum.

• CHANGE.

Mortgage
(equity of re-
demption).

Covenant to pay
the additional
loan.

Mortgagor has
not incumbered.

tors or administrators or any of them, shall or may have sustained or been put unto by reason thereof; [and that the same messuages, lands, hereditaments and premises or any part thereof, shall not be redeemed nor redeemable, either at law or in equity, until not only the said within mentioned sum of £ , and the interest thereof, but also such further and other sum and sums of money, costs, charges, damages and expenses, as is or are hereinbefore mentioned, together with interest for the same, after the rate aforesaid, shall be fully paid and satisfied, unto the said (*mortgagee*), his executors, administrators and assigns, according to the true intent and meaning of these presents.] AND the said (*mortgagor*) for himself, his heirs, executors and administrators, doth hereby further covenant, promise and declare to and with the said (*mortgagee*), his executors, administrators and assigns, that he the said (*mortgagor*), his heirs, executors or administrators, shall and will, upon lawful demand to him or them made by the said (*mortgagee*), his executors, administrators or assigns, for that purpose, well and truly pay or cause to be paid unto the said (*mortgagee*), his executors, administrators and assigns, the said sum of £ , [or all and every such sum and sums of money as at any time and from time to time hereafter shall and may be justly due and owing by him the said (*mortgagor*), his heirs, executors or administrators, unto the said (*mortgagee*), his executors, administrators or assigns, under or by virtue of these presents, or otherwise howsoever,] together with all costs, charges, damages and expenses, which the said (*mortgagee*), his heirs, executors, administrators and assigns, or any or either of them, shall or may sustain or be put unto, by reason of any delay in the payment thereof or any part thereof. AND further that he the said (*mortgagor*) hath not at any time since the date or execution of the within written indenture, made, done or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the messuages, &c. within described and hereby charged or intended so to be, or any part thereof, or any of the appurtenants, or any estate or interest of him the said (*mortgagor*) therein, are or is, or can or may be deteriorated, impeached or prejudicially affected in any manner howsoever. AND moreover, that he the said (*mortgagor*), his heirs, executors, administrators and assigns, and all and every other person or persons claiming or to claim by, from, through or under him or them, or his or their acts, deeds or defaults, shall and will, until full payment and satisfaction thereof, make, do and execute all such further and other lawful and reasonable acts, deeds, matters and things whatsoever, for the better and more effectually or satisfactorily

securing the same with interest after the rate aforesaid, as by him the said (*mortgagee*), his heirs, executors, administrators or assigns or his or their counsel in the law, shall be reasonably required in that behalf (1). IN WITNESS, &c.

CHARGE.

Mortgage
(equity of re-
demption).

(1) In a further charge there should be a covenant from the mortgagor that he has not incumbered since the original mortgage, as well to furnish grounds for damages, in case he should have made an intermediate charge beyond the value of the estate, as to serve as a rebuttal of any new mortgage; but as the mortgagor has already in the mortgage deed covenanted for the title, &c., this, together with that for payment of the additional sum borrowed, and for further assurance, is all that he need be required to enter into.

Covenants.

CHARGE.

Money
(*feme covert*).

No. CCLXXXV.

**A Charge by a Feme Covert of a Sum of Money upon settled Premises, for her own use, in pursuance of a Power.*

Recital of settlement and power.

WITNESS.
Wife charges settled-premises with re-payment of £

THIS INDENTURE made the day of in the
year, &c. and in the year of our Lord 18 . BETWEEN (*wife*)
now the wife of (*husband*) of, &c. formerly spinster of the one
part, and (*trustees*) of, &c. of the other part. WHEREAS, &c. [*recite*
shortly the settlement and full power to charge]. AND WHEREAS
the said (*wife*) is desirous, in pursuance of the said in part recited
power, of charging the said messuages, lands and hereditaments
comprised in the said indenture of release, with the payment of the
sum of £ at the time, in the manner, and for the purposes
hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that
for effectuating the said intention of the said (*wife*), she the said
(*wife*) in pursuance and by force and virtue of the power or authority
in and by the hereinbefore in part recited indenture of release reserved
and given to her in that behalf, and in exercise thereof, and
of all and every other power and powers, authority and authorities,
in anywise enabling her thereunto, HATH charged and made chargeable
and liable, and by this present deed or writing under her hand and seal,
attested by two credible persons, whose names are intended to be
hereon indorsed as witnesses to the same, DOTH charge and make chargeable
and liable ALL and singular the messuages, lands, tenements and hereditaments
which are comprised or described in the hereinbefore in part recited
indenture of release of, or mentioned to bear date, the day of and thereby granted and released
or otherwise assured or expressed or intended so to be, with all and singular
the rights, members and appurtenances to the same several hereditaments
belonging or in anywise appertaining with and to the payment of the full sum of £ of lawful
money of the United Kingdom of Great Britain and Ireland, unto the said (*trustees*),
their executors, administrators and assigns, or

CHARGE.

Money
(feme covert).

unto the survivor of them, his executors, administrators and assigns, upon the day of now next ensuing the date hereof, with interest for the same, from thenceforth, after the rate of five per cent. per annum until the same shall be raised and paid ; BUT NEVERTHELESS upon the trusts, for the uses, intents, and purposes hereinafter declared and expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the better raising and securing the payment of the said principal sum of £ and interest [and for and in consideration of the sum of 5s. of lawful money aforesaid to the said (*wife*) in hand paid by the said (*trustees*) at or before the sealing and delivery of these presents the receipt whereof she doth hereby acknowledge], she, the said (*wife*), in further pursuance and exercise, and by force and virtue of the power or authority, and powers or authorities aforesaid, HATH bargained, sold, limited, appointed and demised, and by this present deed or writing so executed and attested as hereinbefore mentioned, BOTH bargain, sell, limit, appoint and demise unto the said (*trustees*), their executors, administrators and assigns, ALL and singular the said messuages, lands, tenements and hereditaments hereinbefore by these presents charged and made chargeable and liable as aforesaid, or expressed or intended so to be, with their and every of their rights, members and appurtenances, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND all the estate, right, title, use, trust, property, profit, claim and demand whatsoever at law or in equity of her the said (*wife*), of, into or out of the same, and every part and parcel thereof, To HAVE AND TO HOLD the said messuages, lands, tenements, and all and singular the hereditaments hereinbefore limited, appointed and demised, or otherwise assured or intended so to be, with their and every of their rights, members and appurtenances, unto and by them the said (*trustees*), their executors, administrators and assigns, from the making of these presents, from and during and until the full end and term of years from thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste ; PROVIDED always nevertheless, and these presents are upon this express condition, that if the person or persons who shall, for the time being, be entitled to the freehold, reversion and inheritance of the said hereditaments, expectant upon the determination of the said term of years hereby demised, do and shall well and truly pay or cause to be paid unto the said (*trustees*), or to the survivor of them, his execu-

FURTHER
WITNESS.
Demise of the
premises.

To HOLD for a
term of years.

Charge to cease
on payment by
reversioner.

CHARGE.

Money
(feme covert).

tors or administrators, or unto their or his assigns, the sum of £ of lawful money aforesaid with interest for the same, after the rate of five per cent, without any deduction, defalcation or abatement out of the same or any part thereof respectively, for or in respect of any taxes, charges, assessments, payments or other matter or thing whatsoever, then and in such case, and from thenceforth, the limitation, appointment and demise hereby made, and the said term of years hereby created shall cease, determine and be absolutely void to all intents and purposes whatsoever, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

FURTHER
WITNESS.
Declaration of
trusts of sum
charged.

AND THIS INDENTURE FURTHER WITNESSETH, and the said (*wife*) doth hereby declare, direct and appoint, that the aforesaid (*trustees*), and the survivor of them, and the executors and administrators of the survivor, shall stand possessed of and interested in the said principal sum of £ and the interest thereof upon the trusts and for the ends, intents and purposes next hereinafter mentioned, (that is to say) in trust to pay the said principal and interest monies, as and when the same shall be received, into the proper hands of her the said (*wife*) for her own sole, separate and peculiar use and benefit, to the end and intent that the same or any part thereof may not nor shall be in anywise liable to the debts, contracts, engagements or control of the said (*husband*) her husband (and for which her receipts alone shall be a sufficient discharge and sufficient discharges), and subject to the directions and trusts aforesaid, and until full execution thereof, do and shall stand and be possessed of and interested in the said principal and interest monies, or so much thereof as at any time shall not have been paid to the said (*wife*) in pursuance of the said directions, in trust for such person and persons, and to and for such ends, intents and purposes, and under and subject to such provisos, directions, declarations and agreements, and in such parts and proportions, and manner and form, as she the said (*wife*) shall at any time or times, and from time to time during her life, notwithstanding her coverture; and whether covert or sole, by any deed or deeds, writing or writings, to be signed by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing purporting to be or being in the nature of her last will and testament, or any codicil thereto, to be respectively by her signed and published in the presence of and attested by the like number of credible witnesses, direct or appoint and in default of such direction or appointment, and as to so much of the said trust-monies, of which none shall be so made or given or

which shall not take effect, and which shall not have been paid into her own hands, then, from and immediately after the decease of the said (*wife*) in trust for the next of kin of her the said (*wife*), and upon or for no other trust, intent or purpose whatsoever. IN WITNESS, &c.

CHARGE.Money
(feme covert).

CHARGE.

*Mortgage
(further).*

No. CCLXXXVI.

A Charge (further) by Indorsement (1) upon a Mortgage of Freehold (2) or other Premises, for securing the Payment of a Sum advanced since the original Mortgage (3).

Variations where it is for securing the payment of further Sums to be advanced. Also where a further Sum has been already charged.

THIS INDENTURE made the day of in the
year of the reign, &c. and in the year of our Lord 18 BE-

Further charge
better by in-
dorsement.

Different kinds
of property.

Mortgagee ad-
vancing a fur-
ther sum has
priority.

Tacking.

(1) A further charge may be by a distinct instrument; but, to prevent its being separated from the original mortgage, it will be advisable that it should be by indorsement.

(2) This precedent has been so framed as to need but little variation, whatever be the nature of the property charged; should, however, for any reason, the parties wish to have the charge made by a separate deed, then the recital of the mortgage must correspond with the different species of property.

(3) A mortgagee advancing a further sum to the mortgagor will have priority to all mesne incumbrances, unless he have express notice of them before advancing the additional sum; *Bedford v. Backhouse*, 2 Eq. Ca. Ab. 615, pl. 12; *Wrightson v. Hudson*, ib. 609, pl. 7; *Shepherd v. Tilley*, 2 Atk. 325; and although the mesne incumbrance be registered, it will make no difference, as the mortgagee is not bound to search the register office; nor is registry alone a legal notice; and "the English registry acts only avoid prior charges not registered, but do not give subsequent conveyances any further force against prior registered ones than they had before," *ibid.*; but it seems to be otherwise of the Irish registry acts. See *Bushell v. Bushell*, 1 Sch. and Lef. 90; *La-touch v. Lord Dunsany*, ib. 137.

It is a settled rule that a prior mortgagee may tack a judgment to his mortgage, though subsequent in time to a second mortgagee, so that he have not at the time notice of the second mortgage; *Marsh v. Lee*, 2 Vent. 337; 1 Ch. Ca. 162; *Shepherd v. Tilley*, 2 Atk. 325; *Brace v. Marlborough*, 2 P. Wms. 494; for when a mortgagee makes a subsequent advance of money, the court will intend that he makes it on the security of the land as to both sums; *Ex-parte Knott*, 11 Ves. 617;

TWEEN the within named (*mortgagor*) of the one part, and the within named (*mortgagee*) of the other part. WHEREAS the said (*mortgagee*) hath since the execution of the within written indenture lent unto the said (*mortgagor*) the sum of £ in addition to the sum of £ (1), therein mentioned: AND WHEREAS

CHARGE.

Mortgage
(*further*).

Parties.
Recital of loan
of further sum.

Radclyffe v. Warrington, 12 *ib.* 334; and see Barnett v. Weston, 12 *ib.* 130: and where a mortgagee has tacked a judgment to his mortgage, he shall not be confined to the penalty of his judgment, but will be entitled to interest on his judgment debt, although it should exceed such penalty; Godfrey v. Watson, 3 Atk. 518. And if a mortgagor borrow a further sum of the mortgagee, even though it be secured by bond only, he shall not redeem without paying both debts, if the mortgage had become absolute; Anon. 1 Ch. Ca. 164; Taylor v. Beversham, 2 *ib.* 194; Windham v. Jennings, 1 Ch. Rep. 247; Shuttleworth v. Laycock, 1 Vern. 247. But this holds only as between the mortgagee and mortgagor, or his heirs or beneficial devisee, and not as between the mortgagee and assignee of the equity of redemption; Adams v. Claxton, 6 Ves. 229; nor as against the assignees of a bankrupt, unless prior to the act of bankruptcy; *Ex-parte* Herbert, 13 Ves. 183; or unless it be a judgment docketed, Baker v. Harris, 16 *ib.* 397; creditors, trustees for creditors, Price v. Fastenedge, Amb. 685; or other persons entitled for a valuable consideration, Bayley v. Robson, Prec. Ch. 89; Coleman v. Winch, 1 P. Wms. 775; Powis v. Corbet, 8 Atk. 556; Troughton v. Troughton, 1 Ves. 87; Jackson v. Langford, 2 *ib.* 662; Holmes v. Bunce, 3 Atk. 60; Lothian v. Hassell, 3 Brow. Ch. Ca. 162. And it is the same of leaseholds, with respect to the mortgagee and the executors of the mortgagor, Eccles v. Thawill, 2 Vern. 177; Coleman v. Winch, 1 P. Wms. 775. Some cases, however, will be found in the books, where the mortgagor having borrowed a further sum from the mortgagee upon bond, has been allowed to redeem upon payment of the mortgage money only; see Challis v. Casborne, Prec. Ch. 407; Morret v. Paske, 2 Atk. 53; but this doctrine, though it at first appears to be contrary to the rules above laid down, will nevertheless be reconcilable with them, if we attend to the distinction between a mortgagee coming into court to foreclose, and a mortgagor to redeem; in the former case the mortgagee will not be allowed to tack any further securities to his mortgage to the prejudice of the mortgagor; in the latter the mortgagor is bound to do equity before he can have equity done him.

* (1) If there has been an additional sum already charged, say,

Further charge.

“WHEREAS the said (*mortgagee*) has since the execution of the within written indenture, lent unto the said (*mortgagor*) the sum of £ in addition to the sum of £ therein mentioned; and the said (*mortgagor*) hath, by the above written indorsement, duly charged the same upon the said premises in the manner therein expressed: AND WHEREAS the same principal sums of £ and £ are still due and owing to the said (*mort-*

CHARGE.

*Mortgage
(further).*

WITNESS.
That in con-
sideration of the
money now lent

the mortgagor
charges the pre-
mises with the
payment of it.

the said (*mortgagor*) hath executed a bond or obligation in writing bearing or intended to bear even date herewith, for payment of the said sum, with interest for the same after the rate of £5 per cent. per annum, on the of then and now next ensuing, and for better securing the payment thereof hath agreed to charge the same upon the within named premises in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, in hand well and truly paid to the said (*mortgagor*) by the said (*mortgagee*), at or immediately before the sealing and delivery of these presents, the receipt whereof the said (*mortgagor*) doth hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, discharge and exonerate the said (*mortgagee*), his executors, administrators and assigns, as well by these presents as by the receipt or acknowledgment for the same sum hereunder written,] and for securing the repayment thereof with interest at the time and after the rate mentioned in the condition of the said in part recited bond, HE the said (*mortgagor*) for himself, his heirs, executors and administrators, doth covenant (1), grant, declare and agree with and to

gagee) by the said (*mortgagor*) upon the security of the said premises, but all interest in respect of the said sums hath been duly paid and satisfied up to the day of last past: AND WHEREAS the said (*mortgagor*) hath applied to the said (*mortgagee*) to lend him the further sum of £ upon the security of the said premises and the bond of the said (*mortgagor*), which the said (*mortgagee*) hath consented to do."

Subsequent ad-
vances.

And note, that a mortgagee has no security for subsequent advances made on the strength of a parol engagement; *Ex parte Hooper*, 1 Merivale, 7. 2 Rose, 323. S. C.

No conveyance
in a further
charge.

*(1) In a mortgage by way of further charge, no new conveyance is, of course, necessary to be made to the mortgagee, as the estate is already vested in him by the first mortgage: all, therefore, that is requisite, will be, that the mortgagor should declare and agree that the premises shall be chargeable with the sum lastly advanced, as well as the former; and the mortgagor having, also, by the first mortgage, entered into covenants for the title, the only covenant now necessary, besides that for payment of the additional sum borrowed, will be, that he has not subsequently incumbered the estate; this will not only furnish grounds for damages, in case he should have made an intermediate charge, beyond the value of the estate, but also serve as a rebuttal of any implied or presumptive notice in the mortgagee of such intermediate charge, and therefore give him the full benefit of tacking the latter to his original security.

the said (*mortgagee*), his executors, administrators and assigns, in the manner following, (that is to say,) that all and singular the messuages, lands, tenements and hereditaments in or by the within written indenture, granted and released (1), or otherwise conveyed or mentioned, or intended so to be, unto the said (*mortgagee*), his heirs or assigns, by way of mortgage, as within is mentioned, with their and every of their appurtenances, shall stand charged and chargeable with and continue and be a security unto him the said (*mortgagee*), his executors, administrators and assigns, not only for the payment of the said sum of £ (2) and interest as in the said within written indenture mentioned, but also for the payment of the said sum of £ now or since advanced by him as aforesaid, with interest for the same after the rate of £5 per cent. per annum, until payment thereof, and that the said messuages, lands, tenements and hereditaments, or any part thereof, shall not be redeemed or redeemable either at law or in equity until not only the said sum of £ (3) and interest, but also the said sum of £ , and interest, together with all costs, charges, damages and expenses occasioned by or in relation thereto, shall be fully paid and satisfied unto the said (*mortgagee*), his executors, administrators and assigns, according to the true intent and meaning of these presents (4). AND the

CHARGE.

Mortgage
(further).

(1) If the mortgage were by demise or assignment, these words must be made to correspond.

Mortgage by
demise, &c.

(2) If there has been an additional sum already charged, say,

Further charge.

“Not only for the payment of the said principal sums of £ and £ and the interest thereof respectively as in the within written indenture and the above written indorsement are mentioned, but also for the payment,” *as above*.

(3) If there has been an additional sum already charged, say,

Further charge.

“Not only the said several sums of £ and £ and the interest thereof respectively, but also” *as above*.

(4) If the further charge be for securing the payment of such further sums as may from time to time be advanced by the mortgagee, add,

Further sums
to be advanced.

“AND also for all such further or other sum or sums of money, not exceeding in the whole the sum of £ as at any time or times hereafter shall or may be lent, advanced or paid unto or for the use of the said (*mortgagor*) by the said (*mortgagee*), or which shall or may be due and owing from the said (*mortgagor*), his executors or administrators, upon a balance or balances of accounts between them, or which he the said (*mortgagee*), his heirs, executors or administrators, now is or shall, or may at any time or times hereafter become or be liable to pay unto or for the said (*mortgagor*).

CHARGE.

*Mortgage
(further).*

Covenant by
mortgagor, to
pay sum now
advanced.

Hath not in-
cumbered.

said (*mortgagor*) doth hereby for himself, his heirs, executors and administrators, further covenant, promise and agree with and to the said (*mortgagee*), his executors, administrators and assigns, by these presents, in the manner following, (that is to say) that he the said (*mortgagor*), his heirs, executors or administrators, or some or one of them, shall and will well and truly pay or cause to be paid unto the said (*mortgagee*), his executors, administrators and assigns, on the day of next ensuing the date hereof, the said sum of £ with interest for the same after the rate of £5 per cent. per annum, being the same day or time, and sums, as are respectively mentioned in the condition of the said in part recited bond (1): * AND

his executors, administrators or assigns, not exceeding in the whole the sum of £ , together with interest for the same sums respectively after the rate of £5 per cent. per annum from the time of any such advancement until payment and satisfaction thereof, and for all costs, charges, damages and expenses which the said (*mortgagee*), his heirs, executors or administrators, or any of them shall or may sustain, or be put unto by reason thereof."

Money to be ad-
vanced should
be limited not
to exceed a
given sum.

It will be adviseable that a limit should be placed to the amount of the advances to be made by the mortgagee, in order to save the heavy duty imposed by the new stamp act of 55 Geo. 3. c. 184. on mortgages securing the repayment of money without any limit. That act enacts, "that where the total amount of the money secured or to be ultimately recoverable thereupon shall be uncertain or without any limit, a duty of £25 shall be payable; but where the total amount of the money secured or to be ultimately recoverable thereupon shall be limited not to exceed a given sum, then the same duty as on a mortgage for such limited sum."

Power of sale.

If there be a power of sale in the mortgage, add,

* "AND further, that the said premises and every of them shall be and are hereby made subject and liable to the same or like power of sale, and other powers and remedies for payment of the said sum of £ as the same premises are by the within written indenture made subject or liable to, in default of payment of the within mentioned sum of £ ; and in case of such sale or sales, the purchase or consideration money shall be chargeable with and applicable, and applied, as well in payment of the said sum of £ as of the within mentioned sum of £

Further sums.

(1) If the further charge be for securing the payment of further sums to be advanced, add,

"AND shall and will in like manner pay or cause to be paid within the space or period of months next after the advance

also, that he the said (*mortgagor*) hath not parted with or otherwise disposed of his equity or the right to redeem the premises comprised in the within written indenture of mortgage, nor at any time heretofore since the execution of the within written indenture, made, done, executed, or knowingly occasioned or suffered any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the hereditaments and premises comprised in the within written indenture, and intended to be hereby charged with the payment of the said sum of £ and interest or the equity or right of redemption thereof, are, is or may be impeached, charged, incumbered or prejudicially affected in any manner howsoever, but that he the said (*mortgagor*) now hath in himself good right, full power, and lawful and absolute right and title to charge the said sum of £ and interest upon the same hereditaments and premises in the manner hereinbefore mentioned, and according to the true intent and meaning of these presents: AND that he the said (*mortgagor*), his heirs, executors, administrators and assigns, shall and will, at any time or times, until full payment and satisfaction thereof, make, do and execute, or cause and procure to be made, done and executed, at his and their own costs, expenses and charges, as and when thereunto required by the said (*mortgagee*), his executors, administrators, or assigns, all such further and other deeds, matters and things in the law whatsoever, for the further, better, and more effectually or satisfactorily securing the same, with interest after the rate aforesaid, as by him the said (*mortgagee*), his heirs, executors, administrators or assigns, or any of them, or his or their counsel in the law (being of the degree of a barrister), shall be reasonably required in that behalf (1). IN WITNESS, &c.

CHARGE.

Mortgage
(further).Hath not en-
cumbered.Further assur-
ance.

thereof, all and every such further and other sum and sums of money not exceeding the sum of £ , which at any time or times hereafter shall or may be justly due and owing to the said (*mortgagee*), his executors or administrators, by him the said (*mortgagor*), his executors, administrators or assigns, in any manner howsoever."

(1) If there was a receiver appointed by the mortgage deed, there may be here added a direction to the following effect: Receiver.

* "AND the said (*mortgagor*) doth hereby order and direct the said (*receiver*), by and out of the residue or surplus of the rent, issues and proceeds of the several hereditaments and premises which, under or by virtue of the within written indenture is or may be holden by him in trust for the said (*mortgagor*), to pay from time

MARGE.Mortgage
(further).

to time unto the said (*mortgagee*), his exēcutors, administrators or assigns, the interest of the said sum of £ so now advanced by him to the said (*mortgagor*) as hereinbefore is mentioned, or so much thereof as for the time being should be in arrear; and the said (*mortgagor*) doth hereby declare that the receipt of the said (*mortgagee*), his executors, administrators or assigns, shall at all times be an effectual discharge for the same, or for so much thereof as in any such receipt shall be expressed or acknowledged to be received." IN WITNESS, &c.

CHARGE.

Mortgage
(further).

No. CCLXXXVII.

**A Charge (further) upon Mortgaged Premises by Indorsement,
where a power of Sale was given to the Mortgagee.*

THIS INDENTURE made the day of , in the
year, &c. and in the year of our Lord 18 , BETWEEN the within
named (*mortgagor*) of the one part, and the within named (*mort-*
gagee) of the other part. WHEREAS the within mentioned princi-
pal sum of £ still remains owing to the said (*mortgagee*)
upon the security of the within mentioned lands and hereditaments,
but all interest for the same hath been paid up to the day
of last. AND WHEREAS the said (*mortgagor*) is also in-
debted to the said (*mortgagee*) in the further sum of £ ,
since advanced to him, and which he hath agreed to secure by a
further charge upon the said hereditaments, in the manner here-
inafter expressed. NOW THIS INDENTURE WITNESSETH, that in con-
sideration of the said sum of £ , so advanced by
the said (*mortgagee*) since the execution of the within written in-
denture, and now due to him by the said (*mortgagor*) (and of which
advancement and debt, by reason thereof, the said (*mortgagor*)
doth hereby acknowledge), he the said (*mortgagor*) doth hereby
for himself, his heirs, executors, and administrators, charge and
make chargeable and liable, all and singular the messuages, lands,
and hereditaments comprised in the within written indenture, with
and to the payment unto him the said (*mortgagee*), his executors,
administrators, and assigns, as well of the said sum of £ ,
so now lastly advanced as aforesaid, with interest for the same
after the rate of five per centum per annum, as for the payment
of the within mentioned sum of £ and interest.
AND doth hereby declare and agree that the said messuages, lands,
and hereditaments, or any of them, or any part thereof, shall not be
redeemed or redeemable, or subject or liable to any right, power, or

WITNESS.

Mortgagor
charges within
premises with
further sum.

CHARGE.	
<u>Mortgage (further).</u>	equity of redemption, of or by him the said (<i>mortgagor</i>), his heirs (1), executors, or administrators, until full payment and satisfaction, as well of the said last mentioned sum of £ and interest, as of the said within mentioned sum of £ and interest.
Application of produce of sale.	AND further, that if and when the said messuages, lands, and hereditaments comprised in the said recited indenture, or any part thereof, shall be sold or otherwise disposed of in pursuance of the within mentioned power or authority given in that behalf, all and every the sum and sums of money which shall or may be produced or arise from any such sale or disposition, (or the surplus thereof after payment of the principal and interest money, and costs, charges, and expenses, within mentioned,) shall be subject and liable to the payment of the said sum of £ and interest, or so much thereof as at the time of any such sale or disposition shall remain or afterwards become due and be unpaid; and that he the said (<i>mortgagee</i>), his executors, administrators, and assigns, shall or lawfully may retain and pay the same out of or by means thereof, in like manner as he and they is and are authorised or empowered to retain and pay the within mentioned sum of £ and interest, and as if the same had been originally secured upon the within mentioned hereditaments by the within written indenture. AND, &c. [<i>Add covenant to pay, &c.</i>] (2).

Leaseholds.
Covenants.

(1) If the premises be leasehold omit the word "heirs."

(2) See *ante*, p. 304, *et seq.*

CHARGE.

Poor Rates
(*workhouse*).

No. CCLXXXVIII.

*A Charge upon Poor Rates by Guardians of the Poor (1).

By virtue of an Act made in the twenty-second year of the reign of his Majesty King George the Third, intituled An Act for the better relief and employment of the poor, WE, A. B. visitor, and C. D. guardian, of the poor for the parish [or township, *as the case shall be*] of E. in the county, city, &c. of _____, in consideration of the sum of £ _____, to us in hand paid by _____, for the purchase of or purchasing, building, erecting, repairing, fitting up, or furnishing, &c. [*as the case shall be*] a convenient house, buildings, and offices for the reception, accommodation, and employment of the poor of the said parish or township, and for providing suitable stock and utensils for that purpose, do hereby charge the poor's rates to be hereafter made, and the several sums of money to be raised thereupon within the said parish, [or township, *as the case shall be*] with the payment of the said principal sum and interest, after the rate of _____ per centum per annum, half-yearly, as the same shall become due.

(1) By act of 22 Geo. 3. c. 83. for the better relief and employment of the poor (sec. 20.) the visitors and guardians of the poor, appointed under that act, when the expenses of erecting or repairing any buildings for the use of the poor of any parish or place shall exceed £100 or upwards, are authorised to borrow the same at interest, and secure the money borrowed upon the poor's rates, not exceeding £50 for each parish or place, by an instrument to the effect of that given above, and which may be assigned or transferred at pleasure, by writing indorsed thereupon to the following effect: 22 Geo. 3. c. 83.

"I do transfer this security, with all my right and title to the principal money secured, and to all the interest money now due or hereafter to be due, unto C. D., his executors, administrators, and assigns, dated this _____ day of _____ Assignment.

A. B.

WITNESS—E. F.

CHARTERPARTY.Affreightment.

No. CCLXXXIX.

**A General Charterparty of Affreightment (common form (1)).*

THIS CHARTERPARTY OF AFFREIGHTMENT, indented and made the day of in the year of our Lord 18 , BETWEEN (owner) owner [or master] of the ship or vessel called the , of the burthen of tons or thereabouts (2), now lying in the port of , of the one part, and (freighter) of, &c. merchant, WITNESS. freighter of the said ship or vessel of the other part (3), WITNESSETH,

Charterparty.

(1) A charterparty of affreightment is an agreement between the owner or master of a vessel, and a merchant or other person, for the hire of the vessel, or a part of it, for the conveyance of goods to the place to which they are destined; and the freight or affreightment is the sum to be paid by such merchant, or other person, for the carriage of them.

Form.

No particular form is required by law for the validity of a charterparty, but usage amongst merchants has established that given above, variable, however, so as to meet the actual agreement between the parties.

Burthen.

(2) It is generally considered proper to mention the ship's burthen, to prevent a misunderstanding as to the amount of the cargo covenanted by the owner or master to be taken on board; but notwithstanding the burthen of the ship be mentioned it has been held, that if she can conveniently carry more, and the hire be for a full cargo, freight will be payable for the whole that she can carry; see *Hunter v. Fry*, 2 Bar. and Ald. 421.

East India Company.

(3) If the ship is freighted for the service of the East India Company, say,

“AND the united company of merchants of England trading to the East Indies of the other part, witnesseth, that the said part owners, for themselves and the rest of the owners of the said ship, and the said master for himself, his executors and administrators, have granted and let to freight all the said ship unto the said united company; and that the said united company have hired and taken to freight all the said ship, for a voyage with her to be made (by God's

that the said owner [*or master*] for the considerations hereinafter mentioned, HATH granted, and to freight letten, and by these presents DOTH grant and to freight let unto the said merchant (who hath accordingly hired and taken to freight, and by these presents doth hire and take to freight) the said ship or vessel for the voyages, and upon the terms and conditions following (that is to say), The owner of the said ship or vessel [*or the said master*] shall and will forthwith render the said ship or vessel tight, staunch, strong, properly rigged, sufficiently manned, and in every respect fit for navigation, to perform the outward and homeward voyages hereinafter mentioned; and shall thereupon with all convenient speed receive on board, load and stow in a regular and proper manner all such goods and merchandises as shall or may be sent by the said freighter alongside the said ship or vessel in the said port of ,

CHARTERPARTY.

Affreightment.

Owner lets to freight.

And to fit the ship for her voyage.

And ship goods.

blessing), as hereafter mentioned, in trade and also in warfare, and on any other service whatsoever, as the said company, or any of their governors, presidents or agents, authorized thereunto by the court of directors for the time being of the said company, or any committee thereof, shall require or direct; whereupon the said part owners, for themselves jointly and severally, and for the rest of the part owners of the said ship, and for their respective heirs, executors and administrators, and the said master for himself, his heirs, executors and administrators, in consideration of the sum of £ of lawful money of Great Britain, by the said united company to be impressed or paid to them at the ship's arrival at Gravesend outwards, in part of the freight and demurrage to grow due in respect of the said intended voyage, and of the further sum of £ to be then likewise paid by the said company to the said master, in full satisfaction of and for all primage and average which might otherwise become due or payable to the said master, or for or on account of the said ship's intended voyage, and for and in consideration of the concessions and covenants hereinafter on the part of the said company contained, do and every of them doth covenant, grant and agree to and with the said united company of merchants of England trading to the East Indies, their successors and assigns, by these presents, in manner and form following, (that is to say) That the said ship is of the burthen of, &c. [*pursuing a similar form to that above; but with the addition of a great number of special provisions, which it would be useless to insert here, their form being already prepared and printed for use.*"]

CHARTERPARTY.Affreightment.

not exceeding what the said ship or vessel can conveniently and safely carry over sea, besides her provisions, tackle and appurtenances (the master's cabin and the usual and necessary room for the ship's crew excepted); and being so laden, and being also despatched, the said master shall and will, with the then first favourable wind and opportunity, set sail and depart without delay in the said ship or vessel from the said port of _____, and proceed with the next convoy to the port of _____, and upon his arrival there, address himself to the agents or correspondents of the said freighter; and, as soon after as may be, make discharge and right and true delivery of the said goods and merchandizes unto the agents, correspondents, or assigns of the said freighter, according to the bills of lading, and so to the end of the said outward voyage (1). And after delivery of the said outward cargo as aforesaid, the said master shall and will forthwith render the said ship or vessel in all respects fit to receive her homeward cargo, and perform her homeward voyage. And the said master shall and will thereupon, with all convenient speed, receive on board, load and stow in a regular and proper manner all such goods and merchandizes as shall and may be sent alongside the said ship or vessel at the said port of _____ by the said freighter, his correspondents or agents, not exceeding what the said vessel can conveniently and safely carry over sea (besides and except as herein-before mentioned and excepted); and being so laden, and being also again despatched, the said master shall and will with the then first favourable wind and opportunity, without delay, set sail and depart from the said last-mentioned port in the said ship or vessel, and proceed therewith direct to the said port of _____; and upon arrival in the _____ docks, make discharge and right and true delivery of the said homeward cargo, unto the said freighter or his order, according to the bills of lading; and so end the said homeward voyage (the acts of God and the King's enemies, the dangers and accidents of the seas, rivers, and navigation, the restraints and detentions of kings, princes, rulers and republics, and all and every other unavoidable dangers and accidents, excepted). And the owner [or master],

and sails outward.

Deliver cargo.

Refit for homeward voyage.

Load homeward cargo.

Sail on homeward voyage.

Deliver homeward cargo.

Master not to take any but

Particular port.

(1) If the charterparty stipulate for the delivery of goods at a particular port, without express liberty of variance (the charterparty being under seal), no parol substituted of another port will control the effect of the deed upon the established rule of law, that no obligation under seal can be abrogated but by an instrument of equal force; see *Thompson v. Brown*, 1 Moore, 358; and see *Stevenson v. York*, 2 Chit. (Temp. Mansf.), 570.

for himself, his executors and administrators, doth hereby covenant, promise and agree to and with the said freighter, his executors and administrators, that the said master shall not nor will, in either the said outward or homeward voyage, take or load on board, or suffer to be taken or loaden on board the said ship or vessel, any goods, merchandizes, packets, letters or parcels whatever, from any other person or persons whomsoever, other than the said freighter, without his consent and permission, or the consent and permission of his agents, correspondents or assigns, in writing for that purpose first had and obtained. AND the said freighter, for himself, his executors and administrators, doth hereby covenant, promise and agree to and with the said master, his executors and administrators, that he the said freighter shall and will procure, and cause to be sent alongside the said ship or vessel, to be loaden on board thereof, such outward and homeward cargoes as aforesaid, and procure the necessary licences for the same. AND also, that he shall and will well and truly pay or cause to be paid unto the said owner [or master], his executors or administrators, the sum of £ , in full for the freight (1) of the said outward cargo, upon the right and true delivery thereof (2); and the sum of

CHARTERPARTY.

Affreightment.Freighter's
goods, &c.Freighter to procure
cargoes,
&c.

And pay freight.

(1) Provision should be made for payment of freight, if so intended, during the whole period, between the sailing and the arrival of the ship at its destined port, and not made to depend upon its safe arrival, as no freight will otherwise be payable, should the ship, &c. be lost in the interim; see *Gibbon v. Mendis*, 2 Bar. and Ald. 17; and see *Cannon v. Mewburn*, 1 Bing. 465; unless the voyage and return be separated into distinct intermediate voyages to different places; see *Mackrell v. Simond*, 2 Chit. (Ca. temp. Mansf.) 666.

Freight.

Where a charter-party is by way of contract only, without words of demise, the master (keeping possession of it as the servant of the owner) has, on behalf of the owner, a lien on the goods for the freight; *Saville v. Campion*, 2 Bar. and Ald. 503; and see *Meek v. Tate*, 2 Moor. (C. P.) 278, 8 Taunt. 280; *Yates v. Railston*, *ib.* 293; *Same v. Mennell*, *ib.* 302; and it seems that it will be the same although the ship be actually demised, if it appear by the subsequent provisions that the owner is to have the charge of the cargo; see *Hutton v. Bragg*, 7 Taunt. 14. 5 Moor, 211. But the master has no such lien for wages or other disbursements, as the lien must be upon the thing out of which the demand arises; *Smith v. Plummer*, 1 Bar. and Ald. 575. It is very fit that provision should be made in a charterparty for the payment of the seamen's wages, as if not paid they bear a lien on the cargo, &c. on board; *Hobart's Ca.* 2 Dods. (Admir. Ca.) 100. and by 59 Geo. 3. c. 58. justices; where the wages exceed 20s., may levy them by distress or by warrant on the ship, &c.

Lien.

(2) Sometimes the agreement is for so much per ton or so much per doz. or mast, in which case £ . and so in proportion for less than a ton should be expressed; see 2 Lev. 124: or so much per month, &c. during the ship's employment, see *post*.

CHARTERPARTY.*Affreightment.*

Primage and
average, &c.

Running days.

Liberty to send
on board a
supercargo.

Penal clause.

£ , in full for the freight of the said homeward cargo, upon the right and true delivery thereof as aforesaid. AND which said sums of money shall be in entire satisfaction, and in lieu of all primage and average, pilotage and port charges (1) whatever, for the said outward and homeward voyages. AND it is hereby covenanted and agreed, by and between the said parties, that the said merchant shall be allowed lay or running days in the whole, for loading and unloading the said outward and homeward cargoes, to commence and be computed from and exclusive of the days after the said master shall be ready to take in and discharge his said respective cargoes, and notice given thereof to the freighter, his agents, correspondents or assigns. AND it is further agreed by and between the said parties, that it shall be lawful for the said freighter or his agents, correspondents or assigns, to keep and detain the said ship or vessel on demurrage, for the space of working days, over and above the before-mentioned running or lay days, upon paying the said master, his executors or administrators, at the rate of £ sterling per day for each and every of the said days of demurrage (2). AND it is hereby further mutually covenanted and agreed by and between the said parties, that the said freighter shall be at liberty to place and send on board the said vessel a supercargo during the said voyages, for whose passage the said master shall make no charge whatever (the said supercargo, however, finding and providing himself in all necessaries during the said voyages); and for the due performance of all and singular the covenants, conditions and agreements herein contained, the said parties mutually bind themselves, their executors and administrators, in the penal sum (3) of £

Port charges.

Demurrage.

Penalty.

(1) The port charges, unless otherwise provided for, fall on the owner of the ship; see *Faith v. E. I. Co.* 4 Bar. and Ald. 630.

(2) A covenant in a charter-party for payment of demurrage for so many days at her loading and delivery ports will not extend beyond the time specified, nor to other ports than those to which the ship is designated; *Stevenson v. York*, 2 Chit. (T. M.) 570.

(3) A penal sum is usually introduced in charterparties, to be forfeited on failure by either party in performance of the stipulation agreed upon, but to prevent the construction of *Heath, Justice*, taking place, it should seem that a sum by way of *liquidated damages* would be preferable, or at any rate it should be expressly stated which the parties intend, for according to him where several things are to be performed the sum to be forfeited on non-performance is to be considered as a penal sum although not so mentioned, but when one thing only is to be performed the sum to be paid on failure is to be considered as *liquidated damages*;

(double the value of the freight) firmly by these presents (1). IN WITNESS, &c.

CHARTERPARTY.

Affreightment.

Signed, sealed (2), &c.

A. B (3).

C. D.

N.B. When the voyage has been performed, the charterparty should be delivered at to be cancelled.

see 3 Bos. and Pul. 346. 630. see also *ante*, MOD. PREC. Vol. I. p. 15, n. (30). (3d. ed.) and *ante*, Vol. I. pp. 62, 65, notes.

(1) The above are the usual stipulations between the parties to this species of instrument, but any others may be added at the pleasure of the parties, all which charterparties being old mercantile assurances, are literally construed to accord with the intention of the parties; 2 Cro. 263. Mosely v. Hicks. Additions.

(2) A charterparty is generally under seal in order to support an action of debt or covenant; but it will be equally binding on the parties if under the hands only, and will maintain an assumpsit on breach. Seal.

(3) If there be several joint owners who join in the charter-party it must be executed by each of them, if under seal, although they be co-partners; but if under hand only it should seem that the signature of either party would bind the rest; see *ante* MOD. PREC. Vol. VI. p. 45, n. (2), 48, n. (1). Joint owners.

A charter-party is often executed by the master instead of the owners, and which, when it is not under seal, is deemed sufficient and binding on the owners; but if it be under seal he should be careful not to execute on behalf of others, unless authorised to do so by some instrument also under seal, and also to express in the testatum on whose part he executes, as he may otherwise make himself personally liable for the performance of the stipulations of the parties; see MOD. PREC. *ubi supra*, also *ib.* Vol. I. p. 20, in notes. Master.

CHARTERPARTY.

With Convoy.

No. CCXC.

** A Charterparty by several Owners in Copartnership to Freighters in Copartnership (1), to proceed abroad with Convoy.*

WITNESS.
Owners let to
hire at freight.

Covenant by
owners to fit ship
for voyage.

THIS CHARTERPARTY OF AFFREIGHTMENT, indented, made, and concluded upon this day of in the year of our Lord BETWEEN (*owners*) of &c., merchants and partners in trade carrying on business under the firm of , and being owners of the ship (*name*), of tons register admeasurement, or thereabouts, now lying in, &c., whereof (*master*) is now master, of the one part; and (*freighters*) of, &c. also merchants and partners in trade, carrying on business under the firm of , of the other part; WITNESSETH, that the said (*owners*) have let, and the said freighters have taken and hired the said vessel to freight for the voyage, upon the terms and conditions following: Whereupon the said owners do covenant, promise, and agree to and with the said freighters by these presents, that the said vessel shall be tight, staunch, and strong, well and sufficiently manned, provided, and furnished with all things needful and necessary for such a vessel on her intended voyage hereinafter mentioned; and that he the said master shall take and receive on board the said vessel at or in, &c. all such legal goods and merchandizes as they the said freighters may think proper to ship, not exceeding what she can reasonably stow and carry, over and above her tackle, apparel, provisions, and other necessities; and on being fully loaded and afterwards despatched, shall join and proceed with the first convoy to , in the Island of , and on his arrival there deliver, agreeably to bills of lading, unto the agents or assigns of the said freighters, all the goods and merchandizes laden on board the said ship in the river as aforesaid, and upon such a right and true delivery, the said intended voyage to end;

(1) See notes to No. CCLXXXIX. *ante*, p. 310.

the acts of God and the king's enemies, fire, and all and every the dangers and accidents of the seas and of navigation, of whatever nature and kind soever, restraint of princes and rulers, and all other unavoidable casualties during the said voyage always excepted: AND for the purposes of loading the said vessel in the river , the said (*owners*) agree to allow from the day of the date hereof, until within a sufficient time for the said vessel to join the convoy which is appointed to sail the instant, and for unloading at aforesaid, the space of running days in the whole, if required, to be accounted and reckoned from the day she is ready to discharge, and notice thereof given in writing to the agents of the said freighters: In consideration whereof the said freighters do covenant, promise, and agree to and with the said (*owners*) by these presents, to load or cause to be loaden on board the said vessel in the river , a full and complete cargo of all such legal goods and merchandizes as they may think proper, not exceeding as aforesaid, in time to depart with the convoy (1) to sail as aforesaid, and by themselves or agents receive the same out of the said vessel at aforesaid, within the time hereinbefore mentioned, or days of demurrage hereinafter limited: AND also that they the said freighters will well and truly pay or cause to be paid unto the said (*owners*) or their assigns, for the freight or hire of the said vessel for the aforesaid voyage, at and after the rate of £ per ton, agreeably to the tonnage inserted at the foot hereof, in full satisfaction of all freight, primage, and port charges; the same to be paid in manner hereinafter mentioned; that is to say, one half in cash at the clearing out of the said vessel at the custom-house in London, and the other half on a right and true delivery of the cargo by good bills on London at days sight. AND it is also further agreed upon by and between the said parties, that it shall and may be lawful for the said freighters to keep the said vessel on demurrage during the said voyage the space of running days if required; they paying or causing to be paid unto the said (*owners*), or their assigns, for the same, at

CHARTERPARTY.

With Convoy.

Time allowed to join convoy.

Freighters covenants to load ship.

And pay freight &c.

Running days.

(1) It has been held that a proviso in a charterparty that the ship shall arrive and be ready to load a given time before the sailing of convoy, bears relation to the time of loading with respect to the ship's sailing, and not with respect to the general obligation executed, or other matters; *Duffell v. Brocklebank*, 4 Price, 36. Hence the charterparty should, if a contra intention exist between the parties, be worded accordingly. The case of *Shadwell v. Higgins*, 3 Campb. 383. seems however to suppose a different construction, *sed quære?* Convoy.

CHARTERPARTY.With Convey.

Penalty.

and after the rate of £ per ton register per day, anything herein contained to the contrary thereof in anywise notwithstanding. AND for the true and faithful performance of all and every the foregoing covenants, promises, and agreements, the said parties do bind themselves, their heirs, executors, and administrators, (especially the said (*owners*) of the said ship or vessel, her freight and appurtenances, and the said freighters, the merchandizes to be laden in her) each to the other of them in the penal sum (1) of £ of good and lawful money of Great Britain firmly by these presents. IN WITNESS whereof they the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

Sealed and delivered, being first duly stamped,
in the presence of

Penalty.

(1) See *ante*, p. 314, n. (3).

CHARTERPARTY.

With or without
Convoy.

No. CCXCI.

**A Charterparty (1) by one Copartner-Owner on behalf of the rest, and a part Freighter on behalf of the others, to sail with or without Convoy.*

THIS CHARTERPARTY OF AFFREIGHTMENT, indented, had, made, and concluded at this day of , in the year, &c. and in the year of our Lord 18 , BETWEEN of, &c., acting owner of the good ship or vessel called the , of tons measurements or thereabouts, whereof is at present master, now lying in the river , for and on behalf of the rest of the part-owners of the said ship, of the one part; and of, &c., merchant, acting for and on the behalf of his house or trade, under the firm of freighters of the said ship, of the other part; WITNESSETH, that the said (*owners*) for the considerations hereinafter mentioned do hereby covenant, promise, and agree to and with the said (*freighters*), their executors, administrators, and assigns, that the said ship or vessel being tight, staunch, and substantial, and properly fitted, victualled, and manned for the voyage hereafter mentioned to be performed, the said master or some other proper person in his stead shall and will immediately receive and take on board the said ship or vessel in the river from the said freighters, their agents, correspondents or assigns, a full and complete cargo of and other lawful goods, to consist of such kind and qualities as the said freighters may think proper, not exceeding what the said ship or vessel can conveniently stow and carry in her, over and above her stores, tackle, apparel, and provisions; and having received the same on board, and being despatched, shall and will (wind and weather permitting) set sail from the river afore-said, and proceed to the island of with the India convoy expected to sail on the day of now next ensuing,

WITNESS.
Owners covenant to fit out ship and receive cargo.

(1) See notes to No. CCLXXXIX. *ante*, p. 310.

CHARTERPARTY.With or without
Convoy.And deliver
same.Ship to lay in
port to dis-
charge.Covenant by
freighters to
send cargo to
ship.

And pay freight.

or without the said convoy, the said ship or vessel being in all and every respect fully and properly armed and manned, and legally authorized to sail as an armed vessel and letter of marque; and on the said ship's arrival at the said island, the said (*master*), or any other the master of the said vessel for the time being, shall and will give notice thereof in writing to the agents, correspondents, or assigns of the said (*freighters*), and shall and will make a right and true delivery of the said cargo unto them, some or one of them, at in the said Island of , agreeably to the bills of lading that may be signed for the same; and upon such a right and true delivery, the said intended voyage to end (the dangers of the seas and enemies, restraint of princes and rulers, and other unavoidable casualties always excepted). AND the said (*owners*) do hereby further covenant, promise, and agree to and with the said (*freighters*), their executors, administrators, and assigns, that the said ship or vessel shall and will, if required, lay at her destined port of discharge, for the delivery of the said cargo, the space or time of running days; such lay days to commence from the day the said ship shall arrive there, and be ready to deliver the said cargo. In consideration whereof, and of every thing above-mentioned, they the said (*freighters*) do hereby covenant, promise, and agree to and with the said (*owners*), their executors, administrators, and assigns, that they the said (*freighters*), their executors, administrators, correspondents, agents, or assigns, some or one of them, shall at their own proper costs and charges send, or cause a full and complete cargo of or other lawful goods to be sent alongside the said ship in the river aforesaid, and despatch her in proper time to sail with the aforesaid convoy, provided the said ship or vessel should sail with convoy, or within days, provided the said ship or vessel sails without convoy; and likewise that he the said (*freighters*) shall and will pay or cause to be paid unto the said (*owners*), their executors, administrators, and assigns, freight for the said cargo at and after the rate (1) per ton, reckoning the ton as hereinafter mentioned;

Variation.

(1) It is sometimes varied, and such additions made as follow:—

“AT and after the rate of .s. sterling per ton for and during the term of six calendar months at the least, to be reckoned and accounted from the , and so in proportion for any time less than a whole calendar month; and at and after the like rate for all such further time, if any, as the said ship shall or may be kept and detained in the service of the said (*freighter*), and until her

that is to say, in full for freight, primage, and port charges
of the said intended cargo of and other goods; such freight

CHARTERPARTY.

With or without
Convoy.

final discharge in the port of , or up to the day of her being lost, captured, or last seen, or such freight to be paid to the commander of the said ship for the time being in cash, in manner following, (that is to say) so much as shall or may have been earned at the time of the arrival of the said ship at her first destined port abroad shall be paid within ten days next after her arrival at such port, and previous to the delivery of her cargo; and at the expiration of every calendar month after that period the freight then due shall be paid up from time to time during the continuance of the said ship in the service of the said (*freighter*), and the balance of freight that shall or may become due upon the final discharge of the said ship, under and by virtue of this present charterparty, shall be paid on the day the said ship shall be so finally discharged from her said intended service. AND that in case default shall be made of or in the payment of any part of the said freight it shall be lawful for the said commander of the said ship for the time being, to withhold and retain, and to sell and dispose of so much of the cargo on board as shall be sufficient to cover the amount of the said freight, and out of the net proceeds thereof to pay the freight then due and owing as aforesaid."

Default in payment, cargo may be sold.

There is sometimes also added a power for the freighter to purchase the vessel within a given time, at a certain price:

"PROVIDED nevertheless that the said (*freighter*) shall at any time during the continuance of the said intended voyage, have the full and free option of purchasing the said ship for the sum of £ sterling, upon giving notice of such his intention to the owner in writing under his hand days previous to, &c."

Power for freighters to purchase the ship.

The following covenant is likewise sometimes added:—

"AND the said master for himself, his, &c. doth covenant, &c. that he the said master or any of the ship's company shall not, nor will receive, load, or take on board the said ship during the said voyage, any tobacco upon freight or for merchandize on his or their own account, or on account of any other person or persons, but what shall be loaden by the said merchant as aforesaid. But it is agreed that the said master may take in bale goods, so as not to prejudice the loading of the said tobacco, nor to hinder, delay, or stop the said ship in proceeding on her said intended voyage. IN WITNESS, &c.

Master will not take on board contraband goods.

CHARTERPARTY.With or without
Convoy.Owners cove-
nant for mas-
ter's good con-
duct.

Penalty.

Execution.

to be paid as follows: . AND the said (*owners*) do hereby further covenant, promise, and agree to and with the said (*freighters*), their executors and administrators, that the said (*master*) or any other master for the time being, shall and will give the usual and accustomed assistance with his boats and crew in unlading the said intended cargo, as is customary in the said island of ; and that no goods whatsoever shall be received on board the said ship in or during her said intended voyage, but what shall be sent by the said (*freighters*) or their order. AND the said (*owners*) do hereby further agree that it shall and may be lawful to and for the said (*freighters*), their agents or assigns, to keep the said ship or vessel on demurrage at her port of loading aforesaid, the space of running days, on paying to the said commander, or any other commander for the time being, the sum of £ per ton per day, the register measurement of the said ship. AND for the true performance of all and every the covenants, promises, &c. (1). IN WITNESS, &c. Signed, &c. (2).

(1) See *ante*, p. 314, n. (3).(2) See *ante*, p. 315, n. (2).

COGNOVIT.

Assumpsit or
Debt.

No. CCXCII.

*A Cognovit (1) in Assumpsit.
Variations where it is in Debt.

IN THE KING'S BENCH,

Between { A. B. Plaintiff;
and
C. D. Defendant.

I CONFESS this action, [*if in assumpsit or if in debt*, the debt in this cause] and that the plaintiff hath sustained damages to the amount of £ (the damages laid in the declaration), besides his costs and charges, to be taxed by the Master, as between attorney and client [*if so*], but no judgment is to be entered up or execution to be issued until the day of, &c. and default in payment of the sum of £ (the real debt), being the debt in this action, together with costs as aforesaid, but if such default shall be made the plaintiff is to be at liberty to levy the said sum of £ , together with the costs, sheriff's poundage, and all other incidental expenses; and no writ of error or bill in equity shall be brought or filed to prevent or delay the same; as witness my hand, this day of (Defendant.)

Defeasance.

(1) A cognovit is an acknowledgement by the defendant of the plaintiff having just cause of action, and a permission for judgment to be entered up against him without trial; and this acknowledgement will be good although given before the defendant is declared against; *Webb v. Aspinall*, 7 Taunt. 701; or even before process has been served, and although testified after the date of the cognovit; *Wade v. Swift*, 8 Pri. 513. And (by 3 Geo. 4. c. 39. sec. 4.) if a cognovit be given subject to any defeasance or condition, such defeasance or condition must be written on the same paper or parchment as the cognovit.

Nature of cognovit.

* * By 3 Geo. 4. c. 39. sec. 3. every cognovit in a personal action (in the Court of King's Bench), or a true copy of it (if in any other court) shall, together with an affidavit of the time of the execution, be filed within twenty-one days, otherwise the same shall be void against the assignees of the debtor, under a commission of bankruptcy thereafter issuing.

3 Geo. 4. c. 39.

A cognovit, when it is simply the acknowledgement of a debt, does not require to be stamped, but if it include an agreement also, (as it usually does, see *supra*,) it will require, if for more than £20, an agreement stamp.

Stamp.

N.B. The 4 Geo. 2. requires that the attorney of persons signing a warrant of attorney be present if the defendant be in custody; and this act has been held to extend equally to cognovits; *Arnold v. Lowe*, 7 Taunt. 703; but *Lee v. Thurston*, 1 Chit. (K.B.) is contra; and see *Parkinson v. Carpies*, 3 Durnf. and E. 616; but principle seems to sanction the first mentioned authority.

4 Geo. 2.

COGNOVIT.Ejectment.

No. CCXCIII.

**Cognovit* in Ejectment (1).

IN THE KING'S BENCH,

Between { John Doe on the demise of (*Plaintiff*);
and
(*Defendant*).

I do hereby confess this action, and that the said plaintiff, John Doe, is entitled to recover his term of and in the several messuages, barns, stables, lodges, out-houses, gardens, orchards, and land, with the appurtenants, situated and being in the parish of _____ in the county of _____ (being the tenements mentioned in the declaration in this cause); and the said plaintiff for recovering possession of the said tenements may sign judgment hereon, with nominal damages to the amount of forty shillings, on the _____ day of next term (*the first return day*), without prejudice to any action for or right to mesne profits of the said tenements; and the said plaintiff shall be entitled to costs of this suit, to be taxed by the Master. AND I do hereby agree not to bring any writ of error, nor do any other matter or thing whatsoever to delay the said plaintiff from entering up his judgment and suing out execution if he shall think fit so to do; dated the _____ day of _____.

A. B.

(*Defendant's Agent.*)

(1) See *ante*, p. 323, notes; also *post*. Vol. III. "WARRANT OF ATTORNEY."

CONFIRMATION.Devise
(by heir).

No. CCXCIV.

A Deed of Confirmation by an Heir at Law, of an Estate devised to a Stranger (1).

THIS INDENTURE of _____ parts, made the _____ day of _____
in the _____ year of the reign, &c. and in the year of our

(1) A confirmation has been defined by Lord Chief Baron Gilbert to be an approbation or assent to an estate already created, which as far as in the confirmor's power makes it good. Gilb. Ten. 75. There are three kinds of confirmation: the first is called *confirmatio perficiens*, because it confirms and makes good a wrongful and defeasible estate, or makes a conditional estate absolute; the second, *confirmatio crescens*, differing but little from a release, increases and enlarges a rightful estate, and necessarily passes an interest, as an estate at will to an estate for years, or an estate for years to an estate for life, or the like; the third *confirmatio diminuens*, diminishes and changes the service whereby the tenant holds, but which may now be considered as obsolete. To every confirmation *perficiens* there are six requisites, viz. 1st. a good confirmor and a good confirmee, and a thing to be confirmed, as in other grants; Mayowe's Ca. 1 Co. 146. Beaumont's Ca. 9. ib. 141. 2dly. A precedent rightful or wrongful estate in him to whom the confirmation is made, in his own or in another's right, or at least he must have the possession of the thing of which the confirmation is made, that it may be a foundation for the confirmation to work upon, Lit. s. 516. 3dly. The confirmor must have such an estate and property in the thing of which the confirmation is made, as may enable him to confirm the estate to the confirmee; Dyer 109. 4thly. The precedent estate must continue until the confirmation come, as in all cases of voidable interests the confirmation must be made before the estate be made void by entry or otherwise, or the confirmation will be void. 5thly. The estate precedent must be lawful, and not prohibited by any act of parliament; 5 Co. 75. Lit. s. 607. as if a spiritual person, as a prebend, make a lease not warranted by the statute, a confirmation by the dean and chapter will not confirm or amend it; and 6thly, there must be apt words of confirmation in the deed or instrument. The confirmation *crescens* requires all the qualities of a confirmation *perficiens*, and also a privity between the confirmor and confirmee. The cases in which a deed of confirmation

Deed of confirmation.

CONFIRMATION.

*Devise
(by heir).*

Recital of will
devising the es-
tate to the con-
firmer.

Death of testa-
tor and probate
of will.

Lord 18 , BETWEEN (*the confirmor*) of, &c. the eldest son and heir at law of (*the testator*) of, &c. deceased, of the one part, and (*the devisee*) of, &c. a devisee named in the last will and testament of the said (*testator*) of the other part, WHEREAS the said testator by his last will and testament in writing, bearing date on or about the day of , which was in the year gave and devised, or mentioned and intended to give and devise the several messuages, lands, tenements and hereditaments hereinafter described unto the said (*devisee*), his heirs and assigns. AND WHEREAS the said (*testator*) departed this life on or about the day of , in the year of our Lord , and soon after his decease the said will was proved in the prerogative court of the Archbishop of Canterbury by the executors therein named; AND WHEREAS doubts have been entertained with respect to the validity of the said in part recited devise to the said (*devisee*), but the said (*confirmor*) being satisfied that the same was conformable to the real wishes and intentions of the said (*testator*) hath agreed to confirm (1) the said lands and hereditaments unto the said (*devisee*) and his heirs, ac-

may be proper, after a prior conveyance, are numerous; but it is constantly to be borne in mind, that it is only where such conveyance is merely *voidable*, and where it passed the *legal* estate at the time, and in no cases where it is actually *void* (whether it be so *ab initio*, or became so *ex post facto*) and passed nothing, that a deed of confirmation can have any effect; Co. Lit. 295. c.; it being clear that the confirmation of that which is void, or of a defective conveyance, cannot possibly confer upon it any operative effect in the one case, and must confirm the defect in the other; where therefore the former conveyance was actually void, and not voidable only, or passed no estate to the purchaser, the assurance must be by some primary conveyance calculated to pass the estate intended to have been originally granted, or at least contain words having such operation. This observation might be considered puerile, were it not warranted by the inaccurate precedents in the books, and too often by more modern forms.

Confirmation of any estate to the tenant of the freehold is a confirmation of the whole, however qualified in expression the confirmation may be; Lit. s. 519, 520. Co. Lit. 297. a. *ib. n.* (1), an estate of freehold being integral and indivisible.

Estate not passed by will.

(1) If by any informality in the devise, the estate did not pass to the devisee, but descended to the heir of the testator, the deed must be a *confirmatio crescens*, and contain words of conveyance, in which case say,

"Hath agreed by way of confirmation of the said will to convey and assure the said lands and hereditaments unto the said (*devisee*) and his heirs, according to the true intent and meaning of the said will."

ording to the true intent and meaning of the said will. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement (1), and in consideration (2) of the sum of 5s. of lawful money of England to the said (*confirmor*) in hand well and truly paid by the said (*confirmee*) upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HE the said (*confirmor*) HATH ratified, confirmed and established, and by these presents DOTH ratify, confirm and establish the said hereinbefore in part recited will of the said (*testator*) deceased, as to and concerning the said devise to the said (*devisee*) as aforesaid, all limitations, directions, matters and things therein contained in relation thereto, according to the true intent and meaning of the same respectively. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and for the considerations aforesaid, HE the said (*confirmor*) Hath granted, ratified (3), and confirmed, and by these presents DOTH (4) for himself and his heirs, grant, ratify and confirm unto the said (*confirmee*) and his heirs, ALL, &c. (5) or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was

CONFIRMATION.

Devise
(by heir).

WITNESS.
The heir confirms the will.

FURTHER
WITNESS.
The heir grants and confirms.

(1) In order to the validity of a confirmation, it is requisite that the party should be fully apprised of his right at the time; *Roche v. O'Brien*, 1 Ball and Beat. 346; *Tunbar v. Tredenew*, 2 *ib.* 317; in which case the sufficiency of the consideration is not questionable, *ib.* 353. *Stevens v. Lord Bateman*, 1 Brow. Ch. Ca. 22. and see *Bullock v. Sadlier*, Amb. 764; *Nicholls v. Gould*, 2 Ves. 432; *Mortlock v. Buller*, 9 Ves. 306.

(2) If the deed be intended to operate as a bargain and sale to be enrolled, it is essential that this consideration of 5s. should be inserted: if not, it is immaterial, and may with safety be omitted.

(3) The words "ratify, confirm and approve," are the most significant and proper words to make use of in this species of assurance; yet any other general words, as "give and grant," may make a good confirmation; *Gill. Ten.* 79.

(4) This precedent is framed as a confirmation *perficiens*, as being the more simple form, and it will be sufficient in all cases where the estate passed to the confirmee by a previous instrument or act of law, as if the will were duly executed but the competency of the testator at the time be doubted, or the attestation do not fully state the requisite circumstances attending the execution, or the like; but if the will were irregularly executed, or it be doubtful whether it was or not, then it will be proper that words calculated to pass the estate should be added, as "grant, bargain and sell," if it be intended to be by bargain and sale enrolled, which will generally be proper, particularly where the title deeds are not delivered; and "release" if the confirmation be intended to be accompanied by a lease for a year, or if the confirmee be in possession with privacy.

(5) Insert here an accurate description of the premises to be confirmed.

Confirmor
should be apprised of his right.
Consideration.

Bargain and sale.

"Ratify and confirm," the technical words in confirmation.

Estate not passed by will.

If estate of confirmee be doubtful, the confirmation should contain words of conveyance.

Parcels.

CONFIRMATION.Devise
(by heir).General words.Grant of title
deeds.

situated, tenanted, called, known, described or distinguished (1); together with all [houses, outhouses, buildings, barns, stables, coach-houses, dovehouses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, water, lands covered with water, watercourses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, feeding, and foldage of every kind, and all] and all manner of rights, privileges, easements, advantages, appendages, and appurtenances whatsoever to the said messuages, lands and hereditaments or any of them, or any part thereof, respectively belonging or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed (2); and the rents, issues, profits and proceeds to arise or become payable for or in the respect of the same or of any part thereof, from the day of now last past; and all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*confirmor*) in, to, out of, upon or respecting the said hereditaments and premises or any of them; Together with all deeds, muniments, evidences, and writings whatsoever, which in anywise relate solely to the same premises or any part thereof, and which now are or hereafter shall or may be in the possession or lawful power of

Lease and re-
lease.

(1) If the confirmation be by lease and release, add,

“And also all other the messuages, lands, tenements and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year hereinafter mentioned to bear date the day next before the day of the date hereof.”

Lease and re-
lease.

(2) If the confirmation be by lease and release, add,

“(All which said messuages, lands, tenements and hereditaments are now in the actual possession of or legally vested in the said (*devisee*), by virtue of a bargain and sale for a year to him thereof made by the said (*confirmor*) for 5s. consideration, by indenture bearing date the day next before, and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders of and in the said hereditaments and premises, and every of them respectively.

the said (*confirmor*), his heirs or assigns (1), TO HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore granted, ratified, and confirmed, or otherwise assured, or mentioned or intended so to be, with their and every of their rights, members, appendages, and appurtenances, unto, and to and for the use and behoof of the said (*devisee*), his heirs and assigns for ever. AND the said (*confirmor*) for himself, his heirs, executors and administrators, doth hereby covenant and declare with and to the said (*devisee*), his heirs and assigns in manner following, that is to say, that he the said (*confirmor*) hath not at any time heretofore made, done, executed, committed, or knowingly omitted or suffered, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the said messuages, lands, tenements, hereditaments, and premises hereby granted and confirmed, or mentioned or intended so to be, or any part or parts thereof, or any estate or interest therein, are, is, can, shall or may be in anywise impeached, charged, incumbered, or otherwise prejudicially affected in estate, title, value, or otherwise howsoever. AND further, that for and notwithstanding any act, deed, matter or thing whatsoever made, done, executed, committed or knowingly suffered by the said (*confirmor*) (3), or by

CONFIRMATION.

Devise (by heir).

To hold to the devisee absolutely.

Covenant by the heir that he hath not done any act to incumber.

That the devisee shall quietly enjoy.

(1) If the confirmor have any other lands holden by the same title, of which the assurances are in his possession, add, Attested copies.

"And true and attested copies, duly stamped, when and as the said (*devisee*), his heirs or assigns, shall require the same, of the several deeds, muniments and writings comprised or mentioned in the schedule hereunder written or hereunto annexed, and of all other deeds, muniments, writings, and evidences, not being of record, which in anywise relate to the same hereditaments and premises, or any of them, jointly with other hereditaments and property of equal, greater, or inferior value, and which he the said (*confirmor*), his heirs or assigns, can or may procure, without action or suit at law or in equity; such copies when first required to be made and delivered at the expense of the said (*confirmor*), his heirs and assigns; but all future copies to be made and taken at the expense of the person or persons requiring the same."

(2) Littleton s. 523, recommends, "as a good and sure thing," that every deed of confirmation should have these words, "to have and to hold," inserted in it. "To have and to hold."

(3) An heir at law making a voluntary conveyance of lands descended to him, cannot be required to covenant for the title or the acts of his ancestor; Chapman v. Ladbroke, 4 Esp. Rep. 149. Covenants for title.

CONFIRMATION.Devise (by heir).

or with his order, consent or privity, he the said (*devisee*), his heirs and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said messuages, lands, tenements, hereditaments and premises, with their and every of their appurtenances, without any suit, trouble, hindrance, molestation, disturbance, claim or demand whatsoever, of or by the said (*confirmor*), his heirs or assigns, or any other person or persons whomsoever, now or hereafter lawfully, equitably, or rightfully claiming or having title to claim any estate, right, title or interest in, to, out of or respecting the same hereditaments and premises, or any of them, or any part thereof, by, from, through, under or in trust for him, them or any or either of them (1). IN WITNESS, &c.

Further assurance.

(1) A covenant for further assurance is sometimes added to a deed of confirmation; but where the confirmation is a voluntary act or proceeds from a prior voluntary act, it seems unreasonable to require it.

CONFIRMATION.

Deed
(*of an infant*).

No. CCXCV.

A Confirmation by an Infant on his coming of age, of a Feoffment (1) executed by him during his Minority (2).

Variations where the confirmation is in pursuance of an agreement entered into by a Surety for that purpose.

KNOW ALL MEN BY THESE PRESENTS (3), that WHEREAS the within named (4) (*confirmor*) having attained the age of twenty-one years on or about the day of last past, hath agreed (5),

Recital of the
confirmor being
of age.

(1) If the confirmation be of an estate conveyed by the infant during his minority, such conveyance must be supposed to have been by feoffment or act of record as if it were by lease and release, or other instrument not operating by transmutation of possession, by the hand of the infant, it would have been inefficacious. See *ante*, p. 326, n. (1), and *Zouch v. Parsons*, 3 Burr. 1794. But the mode sometimes adopted in practice, where an estate is to be conveyed by several persons, and one of them is under, but nearly of the age of 21, is to make him a party to the conveyance, and when he comes of age he passes the estate remaining in him by executing the deed. This mode, provided the deed be properly stamped, is equally efficacious with any other, and saves the expense of a fresh conveyance by the infant when of age, but it is obviously open to the risk of his dying before he attains his majority, and to an allowance in the stamp duty.

Where words of
conveyance ne-
cessary.

(2) If the deed executed by the infant be absolutely void, and not merely voidable, an absolute conveyance of the estate will be necessary, which may either be by bargain and sale enrolled, lease and release, or any other species of conveyance as from a vendor to a purchaser.

Voidable deeds
only capable of
confirmation.

(3) If a surety covenanted on the part of the infant that he should execute the deed of confirmation when he came of age, the deed should be by indenture, and the surety be made a party of the second part.

Surety.

(4) It will be proper that the confirmation should be indorsed upon the feoffment or other deed intended to be confirmed, in order to prevent their being separated; but if a separate instrument be wished, such deed must be recited.

Indorsement.

(5) If the confirmation be made in pursuance of a covenant entered into by a surety, say,

Surety.

"AND WHEREAS the said (*confirmor*), in pursuance of the co-

CONFIRMATION.

*Deed
(of an infant).*

WITNESS.
That the con-
firmor ratifies
and confirms the
feoffment.

To hold to the
confirmor abso-
lutely.

Covenants to be
inserted.

at the request of the within named (*confirmee*), to execute such ratification and confirmation of the within written indenture as hereinafter is expressed. Now THEREFORE THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in consideration of the sum of 5s. of lawful current money of England to the said (*confirmor*), in hand well and truly paid by the said (*confirmee*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HE the said (*confirmor*) HATH ratified, established and confirmed, and by these presents BOTH for himself and his heirs ratify, establish and confirm the within written indenture of feoffment so executed by him the said (*confirmor*) as within is mentioned, and every clause, matter and thing therein contained, and also ALL and singular the messuages, lands, tenements, hereditaments and premises in the within written indenture described, and thereby granted and enfeoffed or otherwise assured, or mentioned or intended so to be, and all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of him the said (*confirmor*), in, to, out of, upon or respecting the said hereditaments and premises or any of them, TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore ratified and confirmed, or otherwise assured, or mentioned or intended so to be, with their and every of their appurtenances, unto, and to and for the use and behoof of the said (*confirmee*), his heirs and assigns for ever. (*Add covenant by the confirmor that he has not done any act to incumber (1) .*) IN WITNESS, &c.

venant in the within written indenture entered into for that purpose by the within named (*surety*) on his behalf, hath agreed at the request of the said (*confirmee*) and (*surety*) to execute such ratification and confirmation of the within written indenture as hereinafter is expressed."

Incumbrances.

(1) The form of this covenant will be similar to that given *ante*, p. 327.

If the infant executed the deed of confirmation in pursuance of a covenant entered into by a surety for that purpose, it may be proper that the confirmee should execute a release of the covenant, in which case (unless the release be by a separate instrument which is a better mode) say,

Release of cove-
nant.

"AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also for and in consideration of the sum of 5s. of lawful money of England to the said (*confirmee*), in hand

CONFIRMATION.Deed
(of an infant).

well and truly paid by the said (*surety*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said (*confirmer*) doth hereby for himself, his heirs, executors and administrators, exonerate, release, and for ever quit claim and discharge the said (*surety*), his heirs, executors and administrators, of and from the within mentioned covenant, stipulation or agreement entered into by him the said (*surety*), for the confirmation or further assurance of or by the said (*confirmer*) on his attaining the age of twenty-one years as within is mentioned, and of and from all and all manner of actions, suits, process and proceedings, claims and demands whatsoever, which he the said (*confirmer*), his heirs, executors, administrators, or assigns, or any or either of them, can, shall or may, or if these presents had not been made, might or could have or claim, or have had claimed, demanded, or been entitled to, from or against him the said (*surety*), his heirs, executors or administrators, for or by reason or in respect of the said covenant, or otherwise in respect thereof."

CONFIRMATION.

Deed
(of attorney).

No. CCXCVI.

**A Confirmation by the Principal of the Act of his Attorney (1)*
(indorsed on a Deed of Conveyance by the Attorney).

TO ALL TO WHOM IT MAY CONCERN, I the within named (*principal*) do hereby consent to, approve of, ratify and confirm the within written indenture, and all and every the contents thereof, so far as the same indenture concerns or affects my interest in the subject matter thereof, and the signing, sealing, and delivery of the same by the within named (*attorney*), as my attorney thereunto authorized, or acting in my behalf therein. As WITNESS, &c.

Reason of confirmation.

(1) If the power given to the attorney be sufficient to authorize the act done by him no confirmation is requisite; but to prevent any doubt afterwards arising in this respect, or as a notification of the Principal having been alive at the time (an attorney's power ceasing on the death of the Principal), a confirmation often proves satisfactory to the party taking under the deed.

CONFIRMATION.

Deed
(by several).

No. CCXCVII.

**A Deed of Confirmation by several Persons on their coming of age, of Deeds executed by them during Minority.*

THIS INDENTURE made the day of in the
year of the reign, &c. and in the year of our Lord 18 . BE-
TWEEN (the confirmors) of, &c. [*making each of a separate part*
if more than one] of the part, (the guarantees) of &c.
of the part, and (purchaser, mortgagee or other
grantee) of, &c. of the part. WHEREAS, &c. [*recite the convey-* Recitals.
ance made during the minorities, and the covenant, bond or other
assurance that the minor would confirm when of age.] AND
WHEREAS the said several parties hereunto of the part are
respectively desirous of confirming the said conveyance, and of ex-
onerating the said (guarantees) from the said covenant so entered into
by them as aforesaid. NOW THIS INDENTURE WITNESSETH, that WITNESS.
in pursuance and performance and satisfaction of the covenant in the Confirmation.
said in part recited indenture contained, by the said (guarantees) on
the behalf of the said (confirmors) [*or if so of the hereinbefore in part*
recited bond or obligation so entered into by, &c. as aforesaid] [and
also for and in consideration of the sum of 10s. of good and
lawful money of Great Britain to each of them the said (con-
firmors) respectively in hand paid by the said (grantee) at or before
the sealing and delivering of these presents, the receipt whereof is
hereby acknowledged], they the said (confirmors) HAVE, and each
and every of them HATH granted, released, ratified, and confirmed:
AND by these presents DO, and each and every of them BOTH grant,
release, ratify, and confirm unto the said (grantee) and his heirs [*or*
executors, administrators], and assigns, ALL, &c. together with
all and every the rights, members, easements, appendants, and appur-
tenances whatsoever to the same hereditaments belonging or apper-
taining, and all which said hereditaments are now in the actual posses-
sion of the said (grantee) being by virtue of the hereinbefore recited
bargain and sale for a year preceding and accompanying the said

CONFIRMATION.Deed
(by several).To hold to con-
firmee in fee.

Covenants.

indenture of release, and the reversion and reversions, remainder and remainders, and rent, issues, and profits thereof. AND all the estate, right, title, interest, trust, property, claim and demand whatsoever, as well equitable as legal, of them the said (*confirmors*), and of each and every or any or either of them, of, in, or to the same hereditaments and premises, and to every or any part or parcel thereof. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises in or by the said hereinbefore in part recited indenture of release described and thereby granted and released or otherwise assured, or intended so to be, and by these presents granted, released, ratified and confirmed, or otherwise assured or intended so to be, with their and every of their rights, members and appurtenances whatsoever, unto and by him the said (*grantee*), his heirs and assigns, to the only use and behoof of him the said (*grantee*), his heirs and assigns for ever. AND each of them the said (*confirmors*) for himself and herself severally and respectively, and for his and her own respective heirs, executors, and administrators, and not jointly or the one for the others or any other of them, or their, his or her heirs, executors, or administrators do and doth hereby covenant and declare with and to the said (*grantee*), his heirs, [*or executors, administrators,*] and assigns, in the manner following: (that is to say) that &c. [*add covenant that confirmors have done no act to incumber* (1)]. AND THIS INDENTURE FURTHER WITNESSETH that, &c. *Add a release to the guarantees from the recited covenant and bond* (2). IN WITNESS, &c.

(1) See *ante*, p. 327. also p. 328. n. (1).

(2) See *post*. Vol. III. "RELEASE."

CONFIRMATION.

Lease.

No. CCXCVIII.

**Confirmation of a Lease supposed to be defective, by an indorsement thereupon.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within named (lessor) or (the confirmor) of, &c. sendeth greeting. WHEREAS since the execution of the within written indenture it has appeared, &c. [*recite the supposed defect in the lease*]. AND WHEREAS the said (confirmor), not desiring to take advantage of the said defect, hath, at the request of the said (lessee), agreed to execute such confirmation thereof as hereinafter is expressed. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement and for the considerations in the within written indenture expressed [and (if a further consideration is to be paid) and in consideration of the sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland, to the said [or within mentioned (lessor) or (confirmor) in hand well and truly paid by the within named (lessee), at or before the execution of these presents, the receipt whereof is hereby acknowledged] he the said (confirmor), by way of confirmation and further assurance of the within written indenture, HATH demised and leased (1) and also ratified and confirmed, and by these presents DOTH demise and lease, and also ratify and confirm unto the said (lessee), his executors, administrators, and assigns, all that and those the messuages, farms, lands, &c. [*as the case may be*] and every the premises comprised in the within written indenture, and thereby expressed to be demised to the said (lessee) as within is mentioned or in-

WITNESS.
Confirmor demises and confirms.

(1) Where the defect in the lease is such as to leave any legal interest outstanding, it will be necessary to insert fresh words of demise in confirmation, as if otherwise, its effect would be to confirm the lease as it then stood, and consequently not cure the defect; but if it be so merely for want of the requisite consent of third persons or the like this will not be necessary, and words of confirmation alone will be sufficient.

Demise.

CONFIRMATION.Lease.

To hold for
residue of term.

tended so to be, with all and every the rights, members, covenants, and appurtenances to the same belonging, and all the estate and interest thereby expressed or intended to be granted thereof, and all and every covenants, provisions, and agreements therein contained; To HAVE and TO HOLD the said messuages, and all and singular other the premises hereby demised or confirmed or intended so to be, and every part and parcel of the same, with the appurtenants, unto him the said (*lessee*), his executors, administrators, and assigns, henceforth for and during all the residue of the term or period of years in the within written indenture mentioned, which is now to come and unexpired, by effluxion and computation of time, as beneficially to all intents and purposes as if the said within written indenture and the demise or lease therein expressed or intended to be made had been good, valid, and effectual to all and every the intents and purposes therein mentioned, but not further or otherwise (1). IN WITNESS, &c.

Covenants.

(1) No covenants, unless required by special circumstances, will be requisite, as those contained in the lease will be binding notwithstanding a defect in the demise.

CONFIRMATION.

*Rent Charge
(jointure).*

No. CCXCIX.

**A Confirmation by Heir or Reversioner of a Rent Charge granted by way of Jointure [to be indorsed on the Marriage Settlement].*

THIS INDENTURE made the day of , in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN (*heir, reversioner, or as the case may be*) of, &c. of the first part, the within named (*wife*), widow of the within named (*husband*) deceased, of the second part, and the within named (*trustees*) of the third part. WHEREAS the within mentioned marriage took effect soon after the execution of the within written indenture: AND WHEREAS the said (*husband*) departed this life on or about the day of : AND WHEREAS doubts have arisen as to the validity of the said jointure by reason of, &c. [*as the case may be*] but the said (*heir or reversioner*) being desirous that the same may be established hath agreed with the said (*wife*) to execute such confirmation thereof as hereinafter is mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the better and more effectually establishing and confirming the within written indenture, so far as the same regards or concerns the jointure or rent-charge thereby granted to the said (*wife*), he the said (*heir or reversioner*), as far as he can or lawfully may, HATH granted, ratified, and confirmed, and by these presents BOTH grant, ratify, and confirm unto the said (*wife*) and her assigns, all that the within mentioned clear yearly rent-charge of the sum of £ , within granted, or expressed, or intended to be granted or otherwise assured to the said (*wife*), for or by way of jointure as within is mentioned; and all and every the powers of distress and entry, and other the powers and remedies thereby given or expressed, or intended to be given, for the receiving, recovering, or obtaining payment thereof; TO HAVE, hold, receive, perceive, take, and enjoy the said yearly rent-charge or annual sum of £ unto and by her the said (*wife*) and

WITNESS.
Heir, &c. grants
and confirms
rent-charge
to wife.

To hold to wife
for life.

CONFIRMATION.

*Rent Charge
(jointure).*

FURTHER
WITNESS.
Demise and
confirmation of
term.

To hold upon
trust, &c.

her assigns, from the decease of him the said (*husband*), for and during the term of her natural life, in lieu of and full satisfaction of and for all dower and thirds at the common law or otherwise, to which she the said (*wife*) is or might be entitled, in or out of all or any of the real or other estates, property, or effects of the said (*husband*) her late husband deceased. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations and purposes aforesaid he the said (*heir or reversioner*), as far as he can or lawfully may, HATH demised, ratified, and confirmed, and by these presents DOTH demise, ratify, and confirm unto the within named (*trustees*), all and every the manors, messuages, lands, tenements, and hereditaments within described and released, or otherwise assured or intended so to be, with their rights, members, and appurtenances, To HAVE and to HOLD the said manors, messuages, lands, tenements, hereditaments, and premises, with their and every of their appurtenances, unto them the said (*trustees*), their executors, administrators, and assigns, for and during all the residue or remainder now to come and unexpired by effluxion of time, of or in the within mentioned term of years; but nevertheless upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the powers, provisos, declarations, and agreements, in or by the within written indenture contained or expressed concerning the same. IN WITNESS, &c.

CONFIRMATION.

By vendor.

No. CCC.

A Deed of Confirmation to a Purchaser by a Vendor to be indorsed on the Purchase Deed in pursuance of his Covenant for further Assurance (1).

THIS INDENTURE of parts, made the day of
in the year of the reign, &c. and in the year of our Lord
18 , BETWEEN the within named (*vendor*) of the one part, and Parties.
the within named (*purchaser*) of the other part. WHEREAS [*recite* Recitals.
here the circumstances which render the confirmation necessary],
wherefore the said (*purchaser*) hath requested the said (*vendor*) to
execute such further assurance to him of the said within mentioned
premises as hereinafter is mentioned, which the said (*vendor*) hath
agreed to do. NOW THIS INDENTURE WITNESSETH, that in pursuance
and performance of the said agreement, and also for and in consi-
deration of the sum of five shillings of lawful current money of
England, to the said (*vendor*) in hand paid by the said (*purchaser*),
at or immediately before the sealing and delivery of these presents,
the receipt whereof is hereby acknowledged. HE, the said (*vendor*),
HATH granted, ratified, and confirmed, and by these presents
DOTH for himself and his heirs, grant, ratify, and confirm unto
the said (*purchaser*) and his heirs, ALL and singular the messuages,
lands, tenements, hereditaments, and other the premises described
and comprised in and mentioned to be granted and conveyed by the
within written indenture of release, with all and every the appur-
tenances to the same belonging (2), AND all the estate, right, title,
interest, use, trust, property, benefit, claim, and demand whatsoever,
both at law and in equity, of him the said (*vendor*), in, to, upon,

WITNESS.
That in con-
sideration, &c.
the vendor con-
firms

the within men-
tioned premises.

(1) See *ante*, No. CCXCII. p. 323, notes.

(2) If the deed be intended to operate by way of conveyance, see
ante, p. 326, n. (1) and (2).

CONFIRMATION.*By vendor.*

To hold to the
purchaser abso-
lutely.

Covenant by
vendor that he
hath not incum-
bered.

out of, or respecting the said messuages, lands, tenements, hereditaments, and premises, and every or any of them and every or any part thereof, TO HAVE AND TO HOLD (1) the said messuages, lands, tenements, hereditaments, and all and singular other the premises in or by the within written indenture described, and thereby expressed or intended to be granted and released, and by these presents ratified and confirmed, or mentioned or intended so to be, with their and every of their respective rights, members, privileges, appendages, and appurtenances whatsoever, unto and to and for the only proper use, benefit, and behoof of the said (*purchaser*), his heirs and assigns for ever. AND the said (*vendor*), for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said (*purchaser*), his heirs and assigns, in the manner following, (that is to say) that he the said (*vendor*) hath not at any time or times since the execution of the within written indenture (save and except as aforesaid) made, done, executed, committed or knowingly omitted or suffered, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the said messuages, lands, tenements, hereditaments, and premises within mentioned to be granted, released, and conveyed or otherwise assured, and hereby granted, ratified, and confirmed, or mentioned or intended so to be as aforesaid, or any part or parcel thereof, or any estate or interest therein, are, is, can, shall, or may be in anywise impeached, charged, incumbered, or prejudicially affected in estate, title, value, or otherwise howsoever (2). IN WITNESS, &c.

Covenants for
the title.

(1) See *ante*, p. 327. n. (1).

(2) If the vendor were at the time of executing the original purchase deed incapacitated from entering into valid stipulations for the title, &c. here may be added the usual covenants for the title and for quiet enjoyment and further assurance, in the usual form of such covenants.

 CONSENTS.

 Request.

No. CCCI.

**A Consent by Executors to the Bequest of Leasehold Premises or other Specific Legacy (1).*

TO ALL TO WHOM THESE PRESENTS SHALL COME of,
 &c. and of, &c. being executors named in the last will
 and testament of (testator) late of, &c. deceased, SEND GREETING.
 WHEREAS, &c. [*recite the will and bequest to the legatee, the death
 of the testator, and probate of the will in the usual form.*] AND
 WHEREAS the said (legatee) in order the better to enable him to re-
 ceive the benefit of the said bequest or to dispose of the said messuage,
 &c. [*as the case may be*] has requested the said (executors) to ex-
 press their consent in writing to the said bequests as hereinafter men-
 tioned, which having obtained probate of the will of the said testator,
 and being satisfied that all just demands upon the estate and effects
 of the said testator to be by them ordered or administered have been
 fully satisfied, they have agreed to do. Now KNOW YE, that in pursuance
 of the said request and agreement, They the said (executors) HAVE
 and each and every of them HATH consented and assented to the be-
 quest of the said, &c. so made or bequeathed to the said (legatee)
 in or by the said in part recited will of the said (testator) deceased.
 AND so far as in them lies or it behoveth them in that behalf have and
 hath ratified and confirmed, and by these presents do and doth ratify
 and confirm the same bequest and the subject matter of the same, unto

WITNESS.
 Executors as-
 sent to bequest.

(1) Notwithstanding a legacy of stock or chattels whether real or personal be specifically bequeathed, yet as all the personal and chattel interests of the testator vest provisionally in his executors for the payment of debts and expences, the title of the legatee is not complete until the actual or virtual assent of the executor is given. Hence his express assent is frequently desirable in order to enable the legatee to assign without his concurrence, and see *Andrews v. Pierce*, 3 P. Wms. 12. *Mead v. Orrery*, 3 Atk. 238.

Assent of execu-
 tors requisite.

CONSENTS.Bequest.

him the said (*legatee*), his executors, administrators and assigns, as his and their own proper messuages, &c. *or* estate and effects (1).
IN WITNESS, &c.

Assignment.

(1) Sometimes an assignment by the executors is added to the consent; but this appears to be unnecessary.

Stamp.

. No stamp seems to be necessary to an instrument of the above kind.

No. CCCII.

**A Consent by the Owner of Land to a Highway being carried over it (1).*

I A. B. of in the county of being owner of the lands described in the plan hereunto annexed through which part of a certain highway lying between and is intended to be diverted and turned, (in consideration of the sum of £ to be paid to me for the said land and the soil thereof), *or* in consideration of the old highway being sold, exchanged and to be vested in me, also the sum of £ to be paid to me [*as the case may be*] do hereby consent to the making and continuing such new highway through my said lands.

Given under my hand and seal this day of

18

(1) In the schedule to the act of 13 Geo. 3. c. 78. the above form of the consent of the owners of lands to roads being carried through them is given, but that part of the act (sec. 19.) to which the form refers is repealed by 55 Geo. 3. c. 68. without any new form being substituted; but as this appears to have arisen either from inadvertency in framing the latter act or from its being thought unnecessary to repeat the form given in the former act, I have retained it as being still a proper one in these cases. Indeed, where an act of parliament has proposed a form of any writing relative to the purposes of the act, it should be pursued as nearly as circumstances will permit; see *Davidson v. Gill*, 1 East's Rep. 64; and where no particular form is pointed out, it seems proper in preparing them to pursue, as nearly as may be, those which are given in other acts requiring instruments of a similar kind to carry the provisions of the act into effect. 55 Geo. 3. c. 68.

CONSENTS.

Portion.

No. CCCIII.

**A Deed of Consent by a Father to the raising part of a Child's Portion in pursuance of a Power (1).
Variations adapting it to other occasions.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, &c. [*recite shortly the settlement, and the power of consent fully.*] AND WHEREAS the said marriage soon afterwards took effect, and there are several children of the said marriage living, one of whom namely , being the son of the said marriage, has attained his age of years, and it has been deemed expedient that the sum of £ being one part of the presumptive share of the said in the said trust monies should be advanced for the purpose of purchasing him a commission in the army [*or as the case may be*]. NOW KNOW YE, that we the said (*husband and wife*) by this present instrument in writing under our hands and seals, attested by two credible witnesses, whose names are hereunder indorsed for that purpose [*or otherwise as required by the power*], Do consent, approve and direct that they the said (*trustees*) do and shall forthwith make sale of and transfer so much or such part, parcel or quantity of the said per cent. Bank Annuities as at or according to the market price thereof on the day or time of such sale and transfer shall, after deducting the usual commission, produce or

(1) The most usual cases in which a consent of this kind is required, and to which the above form is adapted, is where a power is given to the trustees with the consent of husband and wife, or the survivor, for the advancement of a part of the respective portions of younger children, for their advancement in the world before the decease of the surviving parent, having a life interest in the trust property; but the same form will be applicable, *mutatis mutandis*, to the consent of the husband and wife, or of the trustees, to any act to be done by the other of them affecting the trust-estates, as powers of leasing or charging the premises with a sum of money, changing securities, lending part of the trust-money to the husband, &c.

raise the full sum of £ sterling, in order and to the intent
 that the said sum of £ or so much thereof as shall be found
 requisite, shall and may be applied (1) in and for the purchase of
 a commission for the said (*son*) in His Majesty's regiment of
 or other regiment or appointment in, &c. [*as the case may*
be] as they the said (*husband and wife*) do or shall now and from
 time to time hereafter in their discretion and pleasure think fit.

CONSENTS.

Portion.

(1) Or

Variations.

" May be applied in the purchase of lands, or an advowson, situ-
 ated or being, &c. or in the purchase of per cent. Bank An-
 nuities, or may be paid unto the said (*husband*) upon the security
 of his bond, or to the said (*intended husband if a daughter*), as or
 for her marriage portion upon the said intended marriage taking ef-
 fect, or in the purchase of an annuity of, &c. &c. [*as the case may*
require.]

CONSENTS.

Repair
(*parsonage*).

No. CCCIV.

** A Consent by the First Commissioner of the Treasury, &c. to the building or repairing a Parsonage House, &c. where the patronage is in the Crown (1).*

WHEREAS the living or benefice of _____ within the diocese of _____ is in the patronage of the Crown, and rated above or under [*as the case shall be,*] twenty pounds per annum in the King's books, or of the chancellor of the duchy of Lancaster, [*as the case shall be,*] and application hath been made for building (rebuilding, repairing, or purchasing, or exchanging, *as the case shall be,*) the parsonage house or other buildings, or lands [*as the case shall be,*] for the use of the said living or benefice, in pursuance of the powers given for that purpose by an Act passed in the seventeenth year of the reign of his Majesty King George the Third, intituled an Act to promote the Residence of the Parochial Clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary buildings and tenements for the use of their benefices: Now I the Right Honourable _____ first Lord Commissioner of the Treasury, or Lord High Chancellor of Great Britain, or Chancellor of the duchy of Lancas-

17 Geo. 3. c. 53.

(1) By the Act of 17 Geo. 3. c. 53. cited in a subsequent note (see *post.* p. 350, (n. 1.), sect. 20. consent for the providing a house of residence for the incumbent, in cases where the Crown is the patron of the living, and such living exceeds the value of £20 in the King's books, must be given by the Lord High Treasurer, or first Lord Commissioner of the Treasury for the time being; but if it do not exceed that value, then by the Lord High Chancellor, Lord Keeper, or Commissioner of the Great Seal; and if the patronage be in right of the duchy of Lancaster, by the chancellor of that duchy, to be signified by writing under their respective hands in the above form, or to that effect.

ter, *as the case shall be,*] being satisfied that such building, re-
building, repairing, purchasing or exchanging, &c. [*as the case
shall be,*] will be an improvement and advantage to the said living
or benefice, do hereby consent that such buildings, repairs, purchases,
or exchanges [*as the case shall be*] shall be made according to the
directions, and the true intent and meaning of the said Act.

CONSENTS.
Repair
(parsonage).

Given under my hand this day of 18 .

(Commissioner).

CONSENTS.

Repair
(*parsonage*).

No. CCCV.

** A Consent by an Ordinary and Patron to a Parsonage House being repaired, &c. (1).*

A. B. rector, vicar, &c. [*as the case shall be*] of the parish, chapelry, or perpetual curacy [*as the case shall be*] of _____ in the county of _____, under the jurisdiction of the ordinary, having produced to us, the said ordinary and _____ patron of the said church and living, a certificate, under the hand of _____ a skilful and experienced workman or surveyor, of the state and condition of the buildings upon the glebe belonging to the said church, chapelry, or perpetual curacy [*as the case shall be*], and of the value of the timber and other materials thereupon fit to be sold or employed about such buildings, and also a plan made by the said _____ of the work proposed to be done, in new buildings and repairs upon the said glebe, and an estimate of the expense attending the same after applying the said materials or the money to arise from the sale thereof in such building and repairs, and also a particular account in writing, signed by the said A. B., of the annual profits of such living, and of the rents, stipends, taxes, and other outgoings annually issuing thereout, verified upon oath pursuant to the directions of "An Act passed in the seventeenth Year of the Reign of his Majesty King George the Third, to promote the Residence of the Parochial Clergy, by making provision for the more speedy and effectual Building, Re-building, Repairing, or Purchasing Houses and other necessary Buildings and Tenements for the use of their

17 Geo. 3. c. 53. (1) By the act of 17 Geo. 3. c. 53. sec. 1. (amended by 3 Geo. 4. c. 72.) for promoting the residence of the parochial clergy, it is required that incumbents of livings, &c. shall, before they can be entitled to the benefit of that act, in respect of having a convenient dwelling-house provided for their residence, obtain the consent of the ordinary and patron of the living, by writing under their respective hands, to the repairing or building such house of residence.

Benefices," and having considered such certificate, plan, and account, NOW WE DO APPROVE thereof and do consent that such buildings and repairs shall be made as therein specified; and that the said A. B. do borrow and take up at interest the sum of £ , being the estimate of the expenses, after deducting the value of the timber and other materials thought proper to be sold, and which appears to us from the said account a sum not exceeding two years' net income and produce of the said living, which money is to be paid to (a person nominated by us and the said A. B.) and applied according to the direction of the said Act. IN WITNESS, &c.

CONSENTS.

Repair
(*parsonage*).

(*Ordinary*).

(*Patron*).

* * * The above consent is directed by the act to be written on parchment, but no stamp is necessary. Stamp.

CONSENTS.Revocation.

No. CCCVI.

**A Deed of Consent by Trustees to the exercise of a Power of Revocation of a Settlement (1).*

TO ALL TO WHOM THESE PRESENTS SHALL COME, We (*trustees*) of, &c. SEND GREETING. WHEREAS, &c. [*recite the settlement and power of revocation*]. AND WHEREAS the object of the said settlement so far as regards, &c. has become incapable of taking effect [*or as the case may be*]. NOW KNOW YE, that we the said (*trustees*) at the request of the said (*husband*), by virtue of the said power or authority in or by the said in part recited indenture enabling us thereto, and for the motives and considerations hereinbefore recited or expressed, do by this, our instrument in writing, under our hands and seals, executed in the presence of three credible witnesses, whose names are or are intended to be hereon indorsed, freely and fully consent, agree and approve that it shall and may be and is lawful and proper, according to the true intent and meaning of the said indenture, for the said (*husband*) at any time or times hereafter during the term of his natural life, by any deed or writing or deeds or writings, to be by him sealed and delivered in the presence of three or more credible witnesses or otherwise executed agreeably to the declaration or agreement in the said indenture contained, in regard thereto, to revoke, alter, change or make void, all and every or any of the use or uses, estate or estates in the said recited indenture limited, declared or expressed, and that from and after such revocation, alteration, change or making void of all or any the use or uses, estate or estates, in or by the said in part recited indenture, limited, declared or expressed, they the said (*trustees*), their heirs and assigns,

Covenants.

(1) See as to the consent of third persons being requisite to the execution of a power of revocation, *ante* MOD. PREC. Vol. VII. 437. 3d ed. notes.

CONSENTS.Revocation.

shall and will from thenceforth stand and be seised of the said hereditaments or of such part and parts thereof, of or concerning which the use or uses shall be so revoked, altered or made void, to such other use and uses, and for such other estate and estates, if any, as he the said (*husband*) shall by any deed or deeds, writing or writings, under his hand and seal, to be by him signed, sealed and delivered in the presence of three or more credible witnesses [*if the power so require*] shall direct, limit, appoint or declare, of or concerning the same hereditaments or any part thereof, and in default of any such direction, limitation, appointment or declaration as lastly aforesaid, THEN to the proper use and behoof of him the said (*husband*), his heirs and assigns for ever. IN WITNESS, &c.

COVENANTS.

Apportionment
(rent).

No. CCCVII.

**A Deed of Covenant for the Apportionment of Rent between Purchasers of different parts of Leasehold Premises held under the same Lease.*

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN (*one purchaser*) of, &c. of the one part, and (*other purchaser*) of, &c. of the other part (1). WHEREAS by indenture of lease bearing date on or about the day of which was in the year and made or expressed to be made between, &c. [*recite in the usual manner the lease granted to the lessee of the land or houses in question*]. AND WHEREAS the said (*lessee*) on or about the day of caused the said piece or parcel of ground, and the several messuages thereupon erected, to be put up to sale by public auction in various separate lots or parcels, at which sale the said (*first party*) became the purchaser of the messuage or tenement comprised in lot mentioned in the particulars of sale there exhibited, being the messuage or tenement hereinafter firstly described, and the said (*second party*) became the purchaser of the messuages or tenements comprised in lot in the said particulars of sale mentioned. AND WHEREAS in and by certain printed conditions of sale subjoined to the said particulars, it was declared that the several purchasers of the said premises should respectively, as between themselves, be subject to and pay such portion of the said rent reserved by the said indenture of lease as therein was mentioned, (that is to say) the purchaser of lot the yearly rent of £ , the purchaser of lot £ the yearly rent of, &c.; and that each of them should at his own expense enter into mutual covenants of in-

(1) Or according to the number of purchasers, each of them being of a distinct part.

demnity with the other of them against the residue of the said rent reserved by the said indenture of lease, and against the covenant therein contained, so far as they might respectively relate to the premises by him purchased as aforesaid: AND the said message or tenement so purchased by the said (*first party*) was by indenture of assignment bearing even date with, but executed previously to the execution of these presents, and made between, &c. assigned or otherwise assured to him or intended so to be by the description of all, &c. [*insert the description in the assignment.*] To HOLD the same unto him the said (*first party*), his executors, administrators and assigns, from the day of then last past, for and during all the rest, residue, and remainder then to come and unexpired of the said term of (wanting days thereof), by the said in part recited indenture of lease granted thereof, but subject only to the yearly rent of £ being one (*proportion*) part of the said yearly rent or sum of £ , by the said indenture of lease reserved, and also to the performance of the covenants, conditions, and agreements in the same indenture contained on the part of the said (*lessee*), so far only as the same related to the message or tenement and premises thereby assigned. AND the said message or tenement so purchased by the said (*second party*) was by indenture of assignment bearing, &c. [*recite as before so far as regards the assignment to the second party.*] AND WHEREAS in pursuance of the said conditions of sale, the said parties hereto have agreed to enter into such mutual or reciprocal covenants and agreements concerning the premises as are hereinafter contained. NOW THEREFORE THIS INDENTURE WITNESSETH that in pursuance of the said recited agreement on the part of the said (*first party*), and for and in consideration of the covenants and agreements hereinafter contained on the part of the said (*second party*) he the said (*first party*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise and agree with and to the said (*second party*), his executors, administrators, and assigns, in the manner following: (that is to say), that he the said (*first party*), his executors, administrators, and assigns, shall and will from time to time and at all times hereafter during the residue yet to come and unexpired of the said term of years wanting days, by the said recited indenture of lease granted as aforesaid, well and truly pay or cause to be paid unto the said (*original lessee*) or other the landlord for the time being of the said premises, his heirs, executors, administrators or assigns, or other person entitled to receive the said ground rent or yearly sum of £ , reserved by the said re-

COVENANTS.

Apportionment
(rent).

WITNESS.

First party
covenants with
second party to
pay and indemnify
against his
portion of rent.

COVENANTS.Apportionment
(rent).

And perform
covenants and in-
demnify against
original lease.

Power of dis-
tress on default.

cited indenture of lease, the clear yearly rent or sum of £ being one (*the proportion*) part of the said ground rent or yearly sum, when and as the same, under and according to the true intent and meaning of the same indenture of lease, shall become due and payable. AND also that he the said (*first party*) shall and will during the continuance of the said term perform, fulfil, and keep all and singular the covenants, provisoes, and agreements contained in the said recited indenture of lease on the part of the said (*lessee*), his executors, administrators, and assigns, to be kept, done and performed so far as such covenants, stipulations, and agreements relate to, or concern, or ought to be kept, done and performed in respect or on account of the said messuage or tenement and premises so purchased by him the said (*first party*) as aforesaid, and comprised in the hereinbefore firstly in part recited indenture of assignment or assurance, and of and from the said (*proportion*) part of the said yearly ground rent or sum of £ ; and of and from all and every the said covenants, provisoes, and agreements in the said indenture of lease contained, so far as the same respectively relate or concern, or ought to be kept and observed in respect or on account of the said messuage or tenement and premises so purchased by him the said (*first party*) as aforesaid; and all costs, charges, damages, and expenses which he the said (*second party*), his executors, administrators, and assigns, shall sustain or be liable unto for or by reason of any breach, neglect, or default of or by him the said (*first party*), his executors, administrators or assigns, in or concerning the same, shall and will at all times, and from time to time, save, defend, and keep harmless and indemnified him the said (*second party*), his executors, administrators, and assigns, and his and their lands and tenements, goods and chattels. AND moreover, that in case the said (*second party*), his executors, administrators, or assigns, shall at any time or times hereafter pay, bear, or sustain any sum or sums of money, loss, costs, charges, or expenses for or by reason of the said apportioned yearly rent or sum of not being duly paid, or of the covenants and agreements in the said in part recited indenture of lease not being observed or performed by the said (*first party*), his executors, administrators, and assigns, as aforesaid, according to the true intent and meaning of these presents. THEN and in every such case, and so often as the same shall happen, it shall be lawful for the said (*second party*), his executors, administrators, and assigns, into and upon the messuage or tenement and premises so purchased by the said (*first party*), and comprised or intended to be comprised in the said firstly

in part recited indenture of assignment, to enter and distrain for all and every such sum and sums of money, loss, costs, charges, and expenses which he the said (*second party*), his executors, administrators, or assigns, shall so pay, bear or sustain. AND the distress and distresses then and there found deal with according to due course of law, in like manner in all things as in the case of distress for non-payment of rent-arrears, to the intent that thereby he the said (*second party*), his executors, administrators, and assigns, shall and may be fully paid and satisfied all and every such sum and sums of money, loss, costs, charges, and expenses, and every of them.

AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said in part recited conditions of sale, and of the hereinbefore in part recited agreements on the part of the said (*second party*), and for and in consideration of the covenants and agreements hereinbefore contained on the part of the said (*first party*), he the said (*second party*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree with and to the said (*first party*), his executors, administrators, and assigns, in the manner following: (that is to say) that he the said (*second party*), his executors, administrators, and assigns, shall and will, &c. [*add similar covenants, &c. by the second party as are before entered into by the first party.*] IN WITNESS, &c.

COVENANTS.

Apportionment
(*rent*).

FURTHER

WITNESS.

Like covenant by the second party with the first, with like power of distress.

COVENANTS.Award (abide).

No. CCCVIII.

**A Deed of Covenant by Parties in difference to Abide the Award of Arbitrators.*

WITNESS.
Parties cove-
nant to abide
award.

THIS INDENTURE made the day of , in the year, &c. and in the year of our Lord 18 , BETWEEN (*one party in difference*) of, &c. of the part, (*another party in difference*) of, &c. of the part, &c. [*naming them successively of different parts*]. WHEREAS differences having arisen between the said (*parties*), relative to, &c. [*state the subject of difference*], and in order to put an end to the same, the said parties have agreed to refer the same to the award and final determination of (*three arbitrators*) of, &c. or of any two of them, and to enter into such covenants for the abiding and performance of the said award or determination as hereinafter are contained. NOW THIS INDENTURE WITNESSETH, that they the said (*parties*) do, and each and every of them doth, for themselves and himself, severally and respectively, and for his and their several and respective heirs, executors, and administrators, but not jointly nor the one for the other of them, covenant, promise, and agree with and to each other, and the heirs, executors, and administrators of each other respectively, well and truly, that they and each and every of them (each covenanting severally as aforesaid), and their respective heirs, executors, and administrators, shall and will stand to, obey, abide, observe, and perform the award, order, arbitrament and final determination of the said (*three arbitrators*), or of any two of them, of and concerning the matters and things so to them referred as aforesaid, or of and concerning any matter or thing relating thereto; and also of and concerning all and all manner of action and actions, cause and causes of action, suits, debts, bills, bonds, specialties, sums of money, covenants, contracts, promises, accounts, reckonings, controversies, damages, claims, and demands whatsoever, as well at law as in equity, now or at any time heretofore subsisting or being between the said parties, or any or either of them, so that the said award or final determination be made in writing un-

der the hands of them the said arbitrators, or of any two of them. AND the said (*parties*) do hereby severally and respectively agree that these presents and the submission hereby made shall be made a rule of his Majesty's Court of King's Bench at Westminster, to the end that the said parties may respectively be finally bounden and concluded by the said award or determination, pursuant to the statute in that case made and provided: And further, that neither of them the said parties shall or will prosecute or commence any action or suit in any court of law or equity, or other process or proceedings against the said arbitrators, or any or either of them, against each other, concerning the said matters in difference, until the said award or determination be made and delivered; and also that all costs and charges attending the said arbitration shall be in the discretion of the said arbitrators or any two of them, and be paid and satisfied pursuant to their award. AND for the full performance and observance of the award or determination so to be made as aforesaid, the said parties do moreover hereby severally and respectively bind themselves and their several and respective heirs, executors, and administrators, to each other, and the heirs, executors, and administrators of each other, in the penal sum of £ of good and lawful money of the United Kingdom of Great Britain and Ireland, firmly by these presents (1). IN WITNESS, &c.

COVENANTS.

Award (abide).

Penalty.

(1) See *ante*, p. 62. n. (1), p. 65. n. (3).

Penal sum.

COVENANTS.

*Defeazance
(judgment).*

No. CCCIX.

**A Deed of Covenant by way of Defeazance on a Post-obit Bond and Warrant of Attorney (1).*

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN (*obligor*) of, &c. of the one part and (*obligee*) of, &c. of the other part. WHEREAS the said (*obligor*) having occasion for the sum of £ hath requested the said (*obligee*) to advance him the same upon condition of being paid upon the decease of (*father, or as the case may be*) the sum of £ in case he the said (*obligee*) shall happen to survive him, and for securing the same hath proposed to give his bond and warrant of attorney to confess judgment thereupon, to which the said (*obligee*), in order to oblige and serve the said (*obligor*), hath consented to do. AND WHEREAS the said (*obligee*) hath accordingly this day advanced and paid unto the said (*obligor*) the said sum of £ and in consideration of such payment, and also in pursuance of the said proposal and agreement on the part of the said (*obligor*) he the said (*obligor*) hath by one bond or obligation bearing equal date with and executed before these presents, bound himself, his heirs, executors and administrators, unto the said (*obligee*), his executors, administrators and assigns, in the penal sum of £ of lawful money of Great Britain, subject to a condition thereunder written, that if the said (*obligor*) should happen to survive and outlive his said father , and in that case if the said (*obligor*), his heirs, executors or administrators, should within one calendar month next after the decease of his said father well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, the sum of £ of lawful money of Great Britain without any deduction or abatement whatsoever; or if the said (*obligor*) should happen to die in the lifetime of his said father, then and in either of the said cases the said obligation should cease, be void, and of none effect. AND WHEREAS for the better and more effectually securing the payment of the said sum

(1) See *ante*, p. 200, n. (1).

COVENANTS.

Defraizance
(judgment).

of £ on the event only, and upon the contingency of the said (*obligor*) surviving his said father, he the said (*obligor*) hath executed a warrant of attorney bearing even date herewith and executed before these presents, for confessing a judgment unto the said (*obligee*), his executors, administrators and assigns, in the court of at Westminster for the sum of £ debt upon the said bond, beside costs of suit: And it hath been proposed and agreed that the said judgment shall be forthwith entered up against the said (*obligor*) in the said court of . Now THIS INDENTURE WITNESSETH, and it is hereby declared and agreed by and between the parties to these presents, and the said (*obligee*) doth for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said (*obligor*), his heirs, executors, administrators, and assigns, that in case the said (*obligor*) shall happen to survive and outlive his said father, and in that case if the said (*obligor*), his heirs, executors or administrators, shall and do at such time and in such manner as is mentioned in the condition of the said recited bond or obligation, well and truly pay or cause to be paid unto the said (*obligee*), his executors, administrators or assigns, the said sum of £ of lawful money of Great Britain, or if the said (*obligor*) should happen to die in the lifetime of his said father, then and in either of the said cases, the said judgment so confessed and to be entered up as aforesaid shall be absolutely void, and the said (*obligee*), his executors, administrators or assigns, shall and will at the costs and charges of the said (*obligor*), his heirs, executors or administrators, do and execute all such acts and things as shall be necessary for acknowledging satisfaction upon the record of the said judgment, so as that the same may be vacated and made void. AND it is hereby further agreed by and between the parties to these presents, that no process or execution shall be had, sued out or prosecuted upon the said judgment at any time during the joint lives of the said father and the said (*obligor*) nor until one month after the decease of the said father, in case the said (*obligor*) shall him survive, and that in the last mentioned event, no further or greater sum of money shall be levied, recovered or received, upon or by virtue of the said judgment, from the said (*obligor*), his heirs, executors or administrators, or his or their lands or tenements, goods or chattels, than the said sum of £ and such interest thereof as may accrue, and become due by virtue of the said bond, and the costs relating thereto. IN WITNESS, &c.

WITNESS.
Defraizance of
judgment on
payment by
death of obligor.

COVENANTS.

Fine (levy).

No. CCCX.

Deed of Covenant to Levy a Fine sur cognizance de droit come ceo, and to lead the uses (1).

Variations where it is by a Husband and Wife to a Purchaser in pursuance of a covenant for further assurance. And also where the Fine is levied to a Trustee to the use of future Purchasers of an Estate preparatory to its being sold in Parcels.

THIS INDENTURE of (2) parts, made the day of
in the year of the reign, &c. and in the year of

Different
operations of
fine and reco-
very.

(1) The different operation of a fine and a recovery in barring an estate tail may be explained to be this, viz. that a fine converts the estate tail into a base or determinable fee, whilst a common recovery enlarges the estate tail into a fee simple, or such other estate as the creator of the entail then had in the land. Hence, if the remainder or reversion expectant on the determination of the entail be in the tenant in tail himself, either by limitation or by descent, and there are no intermediate ones, he may bar the entail by fine, because the base fee, acquired by the fine, being a less estate than the reversion or remainder, which is a fee simple, will merge in it; but in most cases, and particularly where it is a reversion by descent, a recovery is the better mode of barring the entail, which, by enlarging or extending the estate tail into a fee simple, prevents the reversion ever coming into possession, and where the tenant in tail is merely such without having any title to the remainder or reversion, a recovery is the only mode by which it can be effectually barred. But as a fine may be levied in the vacation, and a recovery can be suffered in term time only, a fine is sometimes (as where there is apprehension of the tenant in tail dying before a recovery can be perfected) levied together with the recovery, i. e. the tenant to the præcipe is made by fine, in which case where the tenant in tail has the reversion in fee, it should be expressly declared so to be in order to connect the fine and recovery together, that they may form one and the same assurance, and so prevent the fine effecting a merger of the estate in such reversion. This declaration, when it respects a fine already levied, must by 4 and 5 Ann. c. 16. s. 15. be by *deed*, but if it respects a fine to be afterwards levied the uses may be directed by any writing for that purpose, and vid. 2 Fonbl. Eq. 41, n. (c); sed vid. also *Bushel v. Burland*, 11 Mod. 197.

Indenture the
usual mode.

(2) It should seem from *Townman's Ca.* 9 Co. 1. that deeds declaring

our Lord 18 , BETWEEN (*the covenantor*, i. e. *the cognizor*) of, &c. of the one part, and (*the covenantee* (1), i. e. *the cognizee*) of, &c. of the other part. WHEREAS, &c. (2). NOW THIS IN-

COVENANTS.

Fine (levy).

Parties.

the uses of fines or recoveries, before the statute of 4 and 5 Anne, were by deed indented, but as that act declares that such declarations by deed shall be good, without requiring it to be indented, it should seem that if the declaration be by deed, although not by indenture, it will be sufficient: it has been recommended, however, as prudent, to have the declaration by deed indented; see 1 Prest. Conv. 41.

(1) If the fine be levied preparatory to an intended sale of the estate in parcels, it is usual to make two persons trustees, in order that the efficacy of the fine may not be prevented by the death of either of them before it be perfected, though one trustee is fully sufficient for the purposes of the deed.

Fine levied preparatory to future sale in parcels.

(2) If the estate be the property of the wife, say,

Wife's Estate.

"WHEREAS the said (*wife*), the wife of the said (*covenantor*), is seised of an estate of inheritance in fee simple, in possession, by descent from her ancestors [*or as the case may be*], of all and singular the messuages, lands, and hereditaments hereinafter described; and the said (*covenantor*) and , his wife, being desirous of selling the same, have agreed to levy a fine *sur cognizance de droit come ceo*, &c. of the same lands and hereditaments, and to execute such declaration of the uses of the said fine as hereinafter is expressed."

If the estate be the husband's, and the wife have only a title to dower, say,

Husband's estate and wife entitled to dower.

"WHEREAS the said , the wife of the said (*vendor*), is entitled to dower in respect of the lands and hereditaments hereinafter described, in the event of her surviving the said (*covenantor*) her husband, and being desirous of exonerating the same thereupon for the purpose of enabling the said (*covenantor*) her husband, to sell or dispose of the same, freed and discharged of and from her interest therein, it hath been agreed that a fine, *sur cognizance de droit come ceo*, &c. shall be levied of the same lands and hereditaments, with such declaration of the uses thereof as hereinafter is expressed."

If the vendor have contracted for the sale of the estate in parcels, say,

Estate sold in parcels.

"WHEREAS the said (*vendor*) hath contracted with divers persons for the sale of various parts of the lands and hereditaments hereinafter described. AND WHEREAS the said , the wife of

COVENANTS.

Fine (levy).

INDENTURE WITNESSETH, that in pursuance and performance of the

the said (*vendor*), is entitled to dower in respect of the said hereditaments, in the event of her surviving the said (*vendor*), her husband, wherefore, in order to avoid the expense of the several fines being levied to the respective purchasers thereof, it hath been agreed that one fine shall be levied of the whole of the said hereditaments to the said (*trustee*) and his heirs, to the use of the several purchasers, in the manner hereinafter expressed."

If the fine be levied in pursuance of a covenant for further assurance, say,

Fine levied in pursuance of covenant for further assurance.

"WHEREAS by indenture of lease and release bearing date respectively the and days of which was in the year , and made or expressed to be made between the said (*vendor*) of the one part, and the said (*purchaser*) of the other part, the messuages, lands, and hereditaments hereinafter described, were expressed or intended to be granted and released or otherwise assured unto and to the use of the said (*purchaser*), his heirs and assigns, for ever. AND WHEREAS in the said indenture of release is contained a covenant by the said (*vendor*) with the said (*purchaser*) (amongst other things) that he the said (*vendor*) and his heirs, and all and every person or persons then or thereafter having or deriving any estate, right, title, or interest in, to, or out of the said hereditaments, from, through, or under him or them, should and would at all and any times or time thereafter, upon the reasonable request and at the expense of the said (*purchaser*), his heirs or assigns, make, do, execute and perfect all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever for the better and more perfectly or more satisfactorily conveying, confirming, and assuring the same hereditaments unto and to the use of the said (*purchaser*), his heirs and assigns, free from incumbrances, as he the said (*purchaser*), his heirs or assigns, or his or their counsel in the law should require or advise. AND WHEREAS the said , the wife of the said (*vendor*), was not made a party to nor otherwise concurred in the said assurance to the said (*purchaser*), by reason of its being conceived that she was fully barred of all title to dower and other right and interest in the said hereditaments by virtue of certain indentures of settlement made on her marriage with the said (*vendor*), but doubts having been since entertained with respect to the efficiency and extent of such bar, the

Recital of covenant for further assurance.

said agreement and for carrying the same into effect (1), and for conveying and assuring the said messuages, lands, tenements, and hereditaments to, upon, and for the uses, trusts, intents, and purposes hereinafter expressed of or concerning the same (2) [*and also for and in consideration of the sum of 5s. of lawful money of

COVENANTS.

Fine (levy).

said (vendor) and his wife have agreed, at the request of the said (purchaser) to levy a fine *sur cognizance de droit come ceo*, &c. of the said hereditaments and to execute such declaration of the uses thereof as hereinafter is expressed. NOW THIS INDENTURE WITNESSETH," &c. *as above*.

Mr. Preston recommends that the recitals in a deed of covenant to levy a fine, should for the most part show the state of the title and the reason of levying the fine, for where a fine is levied by a husband and wife, the presumption of law, until the contrary be shown, is, that the husband is seised in right of his wife, and therefore as often as the husband is seised in his own right, such fact should be stated. And where a fine is levied, as it frequently is, for the purpose of barring an estate tail, such recitals should be inserted as will show that the fine is a competent assurance for attaining that object, in order to obviate any objection that may hereafter arise, that there may have been remainders or reversions which could not be barred by means of a fine; see 2 Prest. Prac. 75.

Deed to levy fine should shew the cognizor's title.

(1) If the fine be levied for the purpose of barring an estate tail, add, "And for docking, barring, and destroying all estates tail of and in the same messuages, lands, tenements, and hereditaments hereinafter described, and all remainders or reversions expectant or depending thereupon, and all conditions and collateral limitations (if any) annexed to or affecting the same."

Estate tail.

(2) If the fine be levied for the purpose of extinguishing the wife's title to dower, add,

Wife entitled to dower.

"Freed and discharged of and from all title to dower and other estates, rights, titles, and interests of the said , the wife of the said (covenantor), in or concerning the same."

If the fine be levied to a trustee for several purchasers, add,

"And for the more effectually and satisfactorily conveying and assuring the same hereditaments and premises unto and to the use of the person or persons who have so become the purchasers thereof as aforesaid."

Trustee for several purchasers.

Or, "Who shall or may at any time, and from time to time hereafter become a purchaser or purchasers thereof."

* Where brevity is particularly desired, such parts of the precedents as are within brackets may be omitted.

Brevity.

COVENANTS.

Fine (levy).

England to them the said (*covenantor*) and his wife, in hand well and truly paid by the said (*covenantee*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged]. HE (1) the said (*covenantor*) for himself, his heirs, executors, and administrators, [and for the said his wife and her heirs] doth hereby covenant (2), promise, declare, and agree with and to the said (*covenantee*), his heirs and assigns, that they the said (*covenantor*) and his wife [she hereby consenting thereto (3)], or his or her heirs, shall and will at the proper costs and charges of him the said (*covenantor*), his heirs, executors, or administrators, as of term now last past, and in default thereof then, in, or as of term now next ensuing, or any other subsequent term (4) when thereunto required by the said

Joint tenants.

(1) If the covenant be by two or more joint tenants, &c. say,
 "Each of them the said (*covenantors*) severally and respectively, and for their several and respective heirs, executors, and administrators, and not jointly, or the one for the other or others of them, or for the neglect, omissions, or defaults of the other of them, or for the heirs, executors, or administrators of him or them, doth hereby so far as concerns his or her part, share, or proportion of or in the said hereditaments and premises, covenant, promise, declare, and agree," &c. *as above*.

Fine should be acknowledged and king's silver paid as soon as practicable.

(2) It is in some cases difficult to prevent the title resting for a time upon the covenant of the husband to levy a fine; but as this covenant will not be binding upon the wife in case of her death before acknowledgement and payment of the king's silver; see *Otread v. Round*, 4 Vin. Ab. 203; *Hall v. Hardy*, 3 P. Wms. 189; *Emery v. Wase*, 8 Ves. 515; it is always desirable, particularly if the estate be the inheritance of the wife, that this should be done before the transaction in which the fine is required be in other respects completed, as the fine will then be efficient to pass the estate and bind her heirs, notwithstanding her subsequent decease; *Reason v. Sacheverell*, 2 Ch. Rep. 98. 1 Vern. 41; unless it were procured by duress or coercion; *Penne v. Peacocke*, Ca. Temp. Talb. 41.

Assent of the wife.

(3) The words within brackets are introduced according to Mr. Preston's forms instead of her covenant; but it is difficult to conjecture why the mere declaration of assent by a feme covert should be less nugatory than her formal covenant.

Subsequent term.

(4) If there be a variance between the fine and the deed declaring the uses of the fine, as if the fine be levied of a different term than that mentioned in the deed, it is open to averment that it is not the same fine; see *Jones v. Morly*, 1 Ld. Raym. 287. Lest therefore any accident should occur to prevent the fine being levied of the term of which it was

(*covenantee*), his heirs or assigns (1), well and duly acknowledge and levy, or cause to be duly acknowledged or levied, in due form of law unto the said (*covenantee*) and his heirs, before the justices of his Majesty's Court of Common Pleas at Westminster, or other justice or justices, or other person or persons competent in that behalf, one or more fine or fines *sur cognisance de droit come ceo*, &c. with warranty, and with proclamations (2) to be had upon the said fine according to the form of the statute in that case made and provided, and the common course of fines in such cases accustomed, of ALL, &c. (3) and of all [out-houses, buildings, barns, stables, coach-houses,

COVENANTS.

Fine (levy).

Parcels.

intended to be levied, it is usual to mention the preceding and subsequent as well as the present term; but in general a fine is acknowledged at or before the time of entering into the deed to declare its uses, in which case the whole of the covenant is mere matter of form, and might to save expense be omitted, and the declaration of uses only be retained, and see *post*. Vol. III. "Uses."

(1) If the intent of the fine be merely to bar the wife's title to dower, say,

"If she the said (*wife*) shall be then living, but not otherwise."

This will prevent the husband from being capriciously called upon to levy the fine, and also prevent the necessity of his calling upon the covenantee to execute a release of this covenant upon the decease of the wife, before the fine be levied.

(2) To make the fine efficient, if it be levied to bar an entail or to operate as a bar by non-claim, it must be levied with proclamations; see 4 Hen. 7. c. 24. 32 Hen. 8. c. 36. 4 Ann. c. 16. Proclamations.

(3) Insert here a description of the premises of which the fine is intended to be levied, in the same form as in other cases; and if they be New River shares, say, Parcels.

"* ALL those five full eighth parts, the whole into eight parts to be divided, of her the said , of and in all that one thirty-sixth part or share of the moiety, called the King's moiety, of the New River water-work and cut and stream thereof, brought from Chadwell and Amwell in the counties of Hertford and Middlesex, or one of them, to the City of London, as the same is or was mixed with Sir Edward Ford's work, the said King's moiety into thirty-six parts or shares to be divided, and of and in all that messuage belonging or used as belonging to the said works, with the ponds, yards, and gardens thereunto belonging, situate, lying, or being in the parish of Islington in the said county of Middlesex, and of and in all other messuages, tenements, buildings, rivers, ponds, streams, and water-courses belonging or used or enjoyed as belonging to the said water-courses; and of the ground and soil of the said river, ponds, streams, New River shares.

COVENANTS.

Fine (levy).

Declaration of
the uses of the
fine.

dove-houses, yards, cellars, vaults, areas, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, mines, quarries, rights and privileges of common and of feeding and foldage of every kind, and all] and all manner of [other] rights, privileges, advantages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises belonging [or in anywise appertaining or reputed or accustomed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed] by such apt and convenient names, quantities, numbers of messuages and acres, qualities, and other descriptions, as will effectually comprise, ascertain, and pass the same respectively, and as the counsel in the law of the said (*covenantee*) shall advise for that purpose. AND it is hereby declared and agreed by and between the parties to these presents, so far as they are respectively interested in the said premises, and they hereby severally and respectively direct, appoint, and declare, that as well the said fine or fines so as aforesaid, or in any other manner or at any other time or times to be acknowledged and levied of the same premises or any part thereof, as also all and every other fine and fines, and all other conveyances and assurances in the law whatsoever already or heretofore had, made, levied, or executed, or hereafter to be had, made, levied, or executed of the said premises or any part thereof, either separately or together with any other hereditaments by or between the said parties to these presents, or any of them, either alone or jointly with any other person or persons, or whereunto they, or any or either of them was, or were, or are, or is, or shall, or may be parties or privies or party or privy, shall from and after the perfecting thereof be and enure, [and be construed, deemed, adjudged, and taken to be and enure, and the same is and are hereby declared

and water-courses; and of and in all pipes, conduits, engines, cisterns, and other implements to the same belonging; and of and in all and all manner of profits, advantages, and commodities whatsoever thereof or by reason or means thereof to be paid, raised, or gotten; and of and in all such fines and sums of money, rents, reservations, benefits, profits, and commodities whatsoever which now are or at any time or times hereafter shall or may be raised, had, made, levied, or gotten in any place or places or unto any person or persons whatsoever." See also *ante*, MOD. PREC. Vol. I. p. 172, n. (11), 3d edition.

COVENANTS.Fine (levy).

to have been at the time of the making, levying, and executing the same meant and intended to be and enure (1); and the cognizee or cognizees in such fine or fines or other assurance or assurances, or any of them named or to be named, or to whom the same have or hath been, or shall or may be levied, or made, and his and their heirs, shall stand and be seised of the said hereditaments and premises of which the said fine is hereby covenanted or agreed to be levied as aforesaid, with their and every of their appurtenances,] **TO THE USE** (2)

(1) If the fine be levied in pursuance of a covenant for further assurance contained in the said purchase deed, say,

Fine levied by way of further assurance.

"Shall be and enure, as to all and singular the messuages, lands, and hereditaments by the said hereinbefore in part recited indentures of lease and release, granted and released, or otherwise assured, unto and to the use and behoof of the said (*purchaser*), his heirs and assigns, for ever, and as and for a corroboration and confirmation and further assurance of the same indenture, and the grant and release thereby made."

(2) If the fine be levied to a trustee preparatory to a future sale of the land in parcels, say,

Fine levied preparatory to a future sale in parcels.

"To the use of and for such person or persons, in such parts and proportions upon such trusts for such estates and interests, and chargeable in such manner, and for such ends, intents, and purposes as he the said (*covenantor*) shall or may at any time or times hereafter, and from time to time by any deed or deeds, instrument or instruments in writing, under his hand and seal, direct, limit, or appoint, or grant, bargain, sell, release, or convey the same, or any part or parcel, or parts or parcels thereof, and in default of and until such direction, declaration, or appointment shall be made, and in the mean time subject thereto, and as to such parts of the said hereditaments of which none shall be made, **TO THE USE** of the said (*trustee*), his heirs and assigns, **IN TRUST** for the said (*covenantor*), his heirs and assigns, for ever, and to be from time to time disposed of, conveyed, and assured to such person and persons, and in such manner and form, and for such ends, intents, and purposes as he or they shall lawfully direct concerning the same."

If the vendor have already contracted with several purchasers for the sale of the estate in parcels, the uses of the fine may be,

Estate already contracted for.

"As to and concerning **ALL**, &c. (*premises purchased by the first purchaser*) being the several messuages, lands, and hereditaments so purchased by the said (*first purchaser*) as hereinbefore is mentioned, unto and to and for the use and behoof of the said (*first*

COVENANTS.Fine (levy).

and behoof of the said (*covenantee*) (1), his heirs and assigns, for ever (2). IN WITNESS, &c.

purchaser), his heirs and assigns for ever. And as to and concerning ALL, &c. (*the premises purchased by the second purchaser*) being the several messuages, lands, and hereditaments so purchased by the said (*second purchaser*) as hereinbefore is mentioned, unto and for the use and behoof of the said (*second purchaser*), his heirs and assigns, for ever," [*and so on declaring the uses of the several estates to each of the purchasers*].

Wife entitled to dower.

(1) If the fine be levied for the purpose of exonerating the land from the wife's title to dower, care must be taken that the uses of the fine be not declared to him in fee, as a fresh title to dower would immediately accrue, and a fresh fine be requisite if the husband wish to part with them in his wife's lifetime. The limitation must therefore either be to a trustee for the husband, or uses may be declared to such persons as he shall by deed or will appoint in the usual mode of limitation to prevent dower, various forms of which limitation will be found, *ante*, MOD. PRÆC. Vol. I. p. 443, n. (1). 3d edit.

Wife entitled to dower.

(2) If the wife be entitled to dower out of the lands, add,

"And so and in such manner as that the same messuages, lands, tenements, and hereditaments, and every part thereof, shall and may from thenceforth and for ever after be and remain absolutely freed, discharged, and exonerated of and from all estate, right and title of or to dower, as well equitable as legal, which she the said , the wife of the said (*covenantor*), now hath or heretofore had, or at any time hereafter shall or may have or rightfully claim, or might or could have had or rightfully claimed in or out of or respecting the same, or any part or parcel thereof, if these presents had not been made."

COVENANTS.

*Indemnity
(Application of
money).*

No. CCCXI.

*Deed of Covenant to Indemnify a Purchaser against any Mis-
application of Purchase-Money (1).*

THIS INDENTURE of parts, made the day of
in the year of the reign, &c. and in the year

(1) Where freehold lands are directed to be sold, and the monies arising from the sale are to be applied in payment of legacies or debts, purchasers, although justified at law in paying the purchase-money to the trustees, are nevertheless bounden in equity to see it applied according to the trusts, if they be not expressly relieved from that obligation by a clause declaring that the receipts of the trustees shall be a sufficient discharge, because taking the estate with notice of the trusts they become in contemplation of equity trustees for the due execution. But this general obligation of purchasers to see to the application of purchase-money must be understood with some restriction, and to extend to those cases only where the trusts are of such a defined and limited nature as to enable a purchaser to see to the application of the money, as if it be for the payment of legacies or of debts, which are scheduled or otherwise specified; *Abbot v. Gibbs*, 1 Eq. Ca. Ab. 358; *Spalding v. Shalmer*, 1 Vern. 301; *Lloyd v. Baldwin*, 1 Ves. 173; even though the estate be sold under a decree of the Court of Chancery; *Lloyd v. Baldwin*, 1 Ves. 173; or by virtue of any act of parliament; *Cotterell v. Hampson*, 2 Vern. 5; for where the trust is for the payment of debts generally, a purchaser is not bound to see the purchase-money applied, even though he have notice of the debt; because he cannot be expected to see to the due performance of a trust so unlimited and indefinite; *Rogers v. Skillicorne*, Amb. 188; *Smith v. Guyen*, 1 Brow. Ch. Ca. 186; *Williamson v. Curtis*, 3 ib. 96; *Braybrooke v. Inskip*, 8 Ves. 417; nor where the trust is for payment of debts generally and also of legacies, because the debts must be first paid; *Jenkins v. Hiles*, 6 Ves. 654; unless where the estate has been sold under a decree of the Court of Chancery, which reduces the debts to as great a certainty as if they had been scheduled; *Lloyd v. Baldwin*, 1 Ves. 173. The purchaser of leasehold estates, or other chattel or personal interests, is not however liable to see to the due application of the purchase-money, even though defined and limited trusts be declared of it, because these, however they may be bequeathed, are assets in the hands of the executors to be applied in a due course of administration, which is tantamount to a

Purchaser, &c.
liable to see to
the application
of the purchase-
money.

COVENANTS.

*Indemnity
(Application of
money).*

Recital of will
directing the
estates to be
sold.

Sale by auction.

Conveyance to
purchaser.

Doubts as to
competency of
trustees to give
receipts.

of our Lord 18 , BETWEEN (*the covenantors*) of, &c. devisees in trust, named in the last will and testament of (*the testator*) of, &c. deceased of the one part, and (*the purchaser*) of, &c. of the other part. WHEREAS the said (*testator*), by his last will and testament in writing, bearing date the day of which was in the year and duly executed so as to pass real estates of inheritance, gave and devised all and singular his real and personal estates, of what nature or kind soever, unto the said (*devisees*), their heirs, executors, administrators and assigns, UPON TRUST to sell and dispose of the same, or so much and such part thereof as they should think fit, and to stand possessed of and interested in the monies to arise by such sale or sales, IN TRUST to pay, apply and dispose of the same in such manner and for such purposes as in the said will is particularly mentioned. AND WHEREAS the said (*devisees*), in pursuance of the trusts in them reposed by the said will, put up the real estate of the said (*testator*) to sale by public auction, on or about the day of last past, at which sale the said (*purchaser*) became and was declared to be the highest bidder and purchaser thereof, at or for the price or sum of £ AND WHEREAS the said sum of £ hath been this day paid to the said (*devisees*), and by indentures of lease and release the lease bearing date the day next before the day of the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the same persons as are parties to these presents, the said hereditaments and premises have been or are intended to be conveyed unto and to the use of the said (*purchaser*), his heirs and assigns, for ever. AND WHEREAS some doubts having been entertained respecting the competency of the said (*devisees*) to give such an effectual discharge to the purchaser of the said hereditaments as to exonerate him from seeing to the application of the said purchase-money under the trusts of the said will, the said (*purchaser*) hath requested them to enter into such covenants for that purpose as hereinafter are expressed,

bequest for payment of debts generally. In cases where the purchaser is holden to be so liable, his safer and perhaps the only safe way of exonerating himself against the claim of the beneficial legatees, is to see the money so applied, and take discharges from such legatees. Where however the vendors are persons of acknowledged probity and responsibility, it is not uncommon for a purchaser to be satisfied with their covenant for that purpose, for which reason a form has been here given.

which they have agreed to do. NOW THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises aforesaid, they the said (*devisees*) for themselves jointly (1) and severally, and for their several and respective heirs, executors and administrators, do and each of them DOTH covenant, promise, declare and agree with and to the said (*purchaser*), his heirs and assigns, by these presents, in manner following, (that is to say) that they the said (*devisees*) or one of them, their or his heirs, executors or administrators, shall and will pay, apply and dispose of the said sum of £ , so paid to them by the said (*purchaser*) as aforesaid, in or towards payment of the several debts, legacies and other sum and sums of money bequeathed or directed to be paid in and by the said in part recited will of the said (*testator*) deceased, and in and for such other intents, purposes and ways and manner as in or by the said will are declared or expressed concerning the same; AND also shall and will at all times, and from time to time, within the space of six years from the date hereof, at the reasonable request of the said (*purchaser*), his heirs or assigns, state and set forth in writing, under his or their hand or respective hands, how in particular such purchase money shall have been paid, laid out, or applied, or disposed of, and produce and furnish attested copies of the releases, acquittances or other vouchers for the same, so as and to the end that it may fully appear whether and to what extent the said (*purchaser*), his heirs and assigns, and the said hereditaments and premises are or for the time being shall be actually freed and discharged from the said debts, legacies, and monies and the trusts of the said will. AND further, that they the said (*devisees*), or one of them, their or his heirs, executors or administrators, shall and will, from time to time, and at all times, for the space of twenty years next hereafter, at their or his own proper costs and expense, or the costs and expense of the estate and effects of the said (*testator*) deceased, protect, defend and effectually save harmless and keep indemnified, the said (*purchaser*), his heirs and assigns; and also the said hereditaments and premises so conveyed, or mentioned or intended to be conveyed to him and them as aforesaid, of, from and against all and every the same debts, legacies, monies and trusts; and also of, from and against all and all

COVENANTS.

Indemnity
(*Application of*
money).

WITNESS.

The devisees
covenant to apply
the purchase-
money as directed
by the
will.

And produce
receipts, &c.

And indemnify
purchaser.

(1) It is not usual for trustees to covenant for each other; but it is reasonable that they should so covenant where they cannot apply the money without each other's privity. Joint covenant by trustees.

COVENANTS.

Indemnity
(Application of
money).

manner of actions, suits, cause and causes of action and suit, process, and proceedings whatsoever at law or in equity, which now are, or is, or which at any time hereafter shall or may be had, instituted, or depending against them the said (*devisees*), or any or either of them, their or his heirs, executors, or administrators, or the said (*purchaser*), his heirs, executors, administrators, or assigns, for the said debts, legacies, monies, and trusts, or any of them, or any other matter or thing in any wise relating thereto, and of, from and against all loss, costs, charges, damages, and expenses to be by him or them sustained by reason or means thereof. IN WITNESS, &c.

COVENANTS.

Indemnity
(mortgage term).

No. CCCXII.

**A Deed of Covenant by a Vendor or other Grantor to Indemnify against supposed outstanding Mortgage Term or other Incumbrance.*

THIS INDENTURE, made the day of , in the year of the reign, &c. and in the year of our Lord, 18 , BETWEEN (covenantor) of, &c. of the one part, and (covenantee) of, &c. of the other part. WHEREAS, &c. [*recite the conveyance to the purchaser or other grantee in the usual manner*]. Recitals. AND WHEREAS, &c. [*and recite deed creating the term*]. AND WHEREAS it was agreed on the contract for the said purchase [*or as the case was*] that the residue of the said recited term should be assigned to attend the uses and estates in and by the said in part recited indenture declared, but it cannot at present be discovered in whom the same now resides, nor can the said indenture of mortgage, whereby the same was created be any where found, nor any certain or conclusive evidence be produced of the said mortgage having been satisfied. Wherefore the said (grantor) has agreed to enter into such covenants of indemnity against the same as hereinafter is contained. Now THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said last recited agreement, and for the considerations in the said firstly hereinbefore in part recited indenture expressed, he the said (grantor) doth hereby for himself, his heirs, executors and administrators, covenant, promise, grant and agree with and to the said (grantee), his heirs [*or executors, administrators*] and assigns, that he the said (grantor), his heirs, executors and administrators, or some of them, shall and will from time to time and at all times hereafter free, defend, save harmless, and keep indemnified him the said (grantee), his heirs [*or executors, administrators*] and assigns, and every of them, and the said messuages, farms, lands and hereditaments, comprised in and intended to be conveyed or assured by the said firstly hereinbefore in part recited indenture, and every part

WITNESS.
Covenant to indemnify.

COVENANTS.Indemnity
(mortgage term).

thereof, of, from and against the said recited indenture of demise [or as the case was] by way of mortgage, and all mesne assignments made or pretended to be made thereof, and also of, from and against all principal monies and interest which now is, are or may be, or which at any time hereafter shall appear or be thought to be due or owing, or shall be claimed or pretended to be due or owing unto the real or personal representative, or any creditor or creditors of the said (*mortgagee*), his, their or any of their heirs, executors, administrators, creditors or assigns, or any other person or persons whomsoever upon or by virtue of, or under the said mortgage or any assignment or assignments thereof, and also of, from and against all actions, suits, entries, ejectments, evictions, claims and demands whatsoever whether already had, made, commenced, brought or prosecuted, or which shall or may at any time or times hereafter be had, made, commenced, brought, or prosecuted, by the real or personal representatives of the said (*mortgagee*), his or their heirs, executors, administrators, creditors or assigns, or any other person or persons whomsoever, deriving, having, claiming, or pretending to derive, have or claim, any estate, right, title, trust, or interest at law or in equity, of, in, to, or out of the said messuages, lands and hereditaments, or any of them, or any part thereof, by virtue of or under the said mortgage or any mesne assignment or assignments thereof, and of, from and against all loss, costs, charges, damages, and expenses which he the said (*grantee*), his heirs [or executors, administrators] and assigns, or any of them, shall, can or may sustain, expend, or be put unto, for or by reason, or on account of any such action, suit, entry, ejection, eviction, or claim as aforesaid. IN WITNESS, &c.

No. CCCXIII.

**A Deed of Covenant for making a Legal Jointure (1) after an intended Marriage shall take effect.*

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN (*intended husband*) of, &c. of the first part, (*intended wife*) of, &c. of the second part, and (*trustees*) of, &c. of the third part. WHEREAS a marriage is intended to be shortly had and solemnized between the said (*intended husband*) and (*intended wife*). AND WHEREAS the said (*intended husband*), in order to the making a competent provision for the said (*intended wife*) in case she should survive him, [and in consideration of the fortune to which he will be entitled to in her right upon the solemnization of the said marriage,] is desirous of settling the lands and hereditaments hereinafter described, to the use of his said intended wife for or by way of jointure; but as some parts thereof are under such present incumbrances as to prevent his immediately making a good and perfect jointure therewith, he has agreed to enter into such covenant for making the same after the said marriage shall take effect, as hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the considerations and purposes hereinafter mentioned, He the said (*intended husband*) DOth covenant, promise, grant, and agree with, and to the said (*trustees*), and their heirs, in the manner following: (that is to say,) That he the said (*intended husband*), or his heirs, shall and will within the space of calendar months next ensuing the date of these presents, [in case the said intended marriage

Intended marriage.

WITNESS.
Intended husband covenants to convey lands for jointure within a given time.

(1) See of a jointure of this kind, *ante*, Vol. I. No. C. p. 311 in notes; and *ante*. MOD. PRÆC. Vol. VII. pp. 262. n. (1) 300, n. (1) 3d Ed. also 2 Elem. Conv. (2d Edit.) pp. 283, 287: and for a deed of covenant to grant rent charge by way or instead of a proper jointure, which is generally a more convenient provision, see *post*. No CCCXV.

COVENANTS.

Jointure
(*legal*).

To hold to use
of husband and
wife, for life of
wife.

Power to grant
leases.

Declaration of
uses.

between him and the said (*intended wife*) shall previously have taken effect, and the said (*intended wife*) shall be then living] by good and sufficient conveyances and assurances in the law, to be approved of by the counsel of them the said (*trustees*), or of the survivor of them, well and effectually convey and assure unto the said (*trustees*), and their heirs, or to the survivor of them, and his heirs, or to their or his assigns, ALL that, &c. with all and every the rights, members, and appurtenances thereunto belonging; To HAVE AND TO HOLD the same lands and hereditaments upon, to and for the uses, trusts, intents, and purposes hereinafter declared or expressed concerning the same, (that is to say) to the use and behoof of the said (*intended husband*) and () his said intended wife, for and during the natural life of the said (*intended wife*), and in full recompense and satisfaction of her dower, or to such other uses, and in such other manner and form as shall be fit and proper to make a good, valid, and legal jointure to or for her the said (*intended wife*), according to the true intent and meaning of these presents, and immediately from and after the decease of the said (*intended wife*), to the use of him the said (*intended husband*), his heirs and assigns, for ever: PROVIDED ALWAYS NEVERTHELESS, and it is the true intent and meaning of the said (*intended husband*) and of the parties to these presents, that it shall be lawful for the said (*intended husband*), at any time or times hereafter, at his will and pleasure, to demise, grant, and make any lease or leases for the term of twenty-one years or under, or for three lives or less, to commence from the time of making such lease or leases in possession, and not in reversion, of all and singular the aforesaid lands, tenements, and hereditaments, and other the premises with their appurtenants, or of any such part or parcel of the same as have or has most commonly been demised, or to farm letten by the space of twenty years last past before the date hereof, so that the said (*intended wife*) be made party to all and every such leases and demises, and that the old accustomed rent and rents or more be reserved upon all and every the said leases, grants, and demises so to be made of the premises or of any part thereof as is aforesaid, to continue and be payable yearly during every of the said leases and terms unto the said (*intended husband*) and his said (*intended wife*), and the heirs and assigns of the said (*intended husband*), and so always as the said leases or demises or any of them be not in any wise dispunishable of waste: AND that then and from thenceforth the said (*trustees*) and their heirs shall stand and be seised of all and singular the said lands, tenements, here-

COVENANTS.

Jointure
(legal).

Reservation of
rents on leases.

ditaments, and other the premises, with their appurtenants, and of and in every part or parcel thereof, so to be demised and leased to the use and uses of all and every such person or persons to whom the same or any part or parcel thereof shall be demised and leased, their and his executors, administrators, and assigns, for and during such term and terms therein as shall be limited upon any such lease or leases so to be made as aforesaid: So NEVERTHELESS, and upon condition that he or they to whom any such lease or leases as shall be made as aforesaid, their and his executors, administrators, and assigns, do well and truly pay or cause to be paid such of the same yearly rents and payments as shall be reserved and appointed to be paid upon the making of every such lease or leases as aforesaid to the said (*intended husband*) and (*intended wife*), during the life of the said (*intended wife*), and after her decease to all and every such person and persons to whom from time to time, and for the time being, the immediate use, estate, reversion, remainder, or interest of and in the same, or of and in any part or parcel thereof so to be demised or leased as aforesaid, shall by and according to the true intent and meaning of these presents, next belong, revert, remain, come or be after the expirations of such several demises or leases as aforesaid, and shall and do well and truly observe, perform, fulfil and keep all and singular the covenants, grants, articles, conditions and agreements contained and specified in the same lease, leases, and demises on the tenant's part to be observed, performed, fulfilled, and kept according to the true intent and meaning of every such lease, grant, or demise. AND so also, and upon condition that he or they to whom any such lease or leases shall be made, his or their executors, administrators, and assigns, do not at any time or times during his or their estate or several estates of and in the premises, or of or in any part or parcel thereof so to be demised or leased, commit, or make, or willingly procure, or assent to, or suffer to be committed or done any manner of waste, or destruction in and upon the premises, or in or upon any part or parcel thereof which shall amount to ten shillings, without the special licence and assent of the said (*intended husband*) and (*intended wife*), or of such person or persons to whom the immediate use, reversion or remainder thereof shall for the time being be and appertain. AND also so that he or they to whom any such lease or leases shall be made of the premises, or of any part or parcel of the same as aforesaid, shall and do at all times during his or their estate or estates of and in the same, well and truly pay or cause to be paid to all and every such person or persons to whom from time to time and for the time being the imme-

And dues, &c.

COVENANTS.

Jointure
(legal).

diate use, estate, reversion, remainder or interest of or in the same, shall by and according to the true meaning of these presents next belong, revert, remain, come, or be after the expiration or determination of such the said several demises, all manner of rents, services, duties, and customs, which either upon such several demises or leases so to be made as aforesaid, shall be reserved or shall otherwise be due by reason of the lands so to be demised or leased according to the true meaning, purport, and intent of the said several demises or leases thereof, to be made in manner and form aforesaid. AND FURTHER the said (*intended husband*), for the considerations hereinbefore expressed, doth for himself and his heirs, executors, and administrators, covenant, declare, grant and agree with and to the said (*trustees*) their heirs and assigns, that if he the said (*intended husband*) shall not, or do not, within the said space of calendar months next after the said intended marriage shall take effect, well and sufficiently convey and assure all and singular the aforesaid hereditaments and premises with their appurtenants unto the said (*trustees*) and their heirs, in the manner aforesaid, that then and immediately from and after the end of the said term or period of calendar months next ensuing the date hereof, the said (*intended husband*) and his heirs, and all and every other person or persons who shall then stand and be seised of the said hereditaments and premises, or of any part or parcel thereof shall stand and be seised of and interested in the same, or so much and such part or parts thereof, with their appurtenants as shall not be so sufficiently conveyed as aforesaid, to such and the same uses, and with and under such conditions, provisoes, limitations, declarations, and agreements, as in or by these presents are limited, declared, expressed or intended concerning the same. IN WITNESS, &c.

COVENANTS.

*Jointure
(copyholds).*

lieu of dower or freebench, so as such annuity or yearly rent-charge did not exceed £ , per annum for every £ which the said (*intended husband*) should receive with such woman, and so as the same should not exceed in the whole one half of the clear yearly value of the said copyhold hereditaments. AND WHEREAS the said testator afterwards departed this life without revoking or altering his said will, and the said (*intended husband*) has been duly admitted to and is now in possession of the said hereditaments under or by virtue of the said will. AND WHEREAS a marriage is about to take place between the said (*intended husband*) and the said (*intended wife*), who upon her marriage will be entitled to and will receive the sum of £ as her portion or fortune. AND WHEREAS the said (*intended husband*) is desirous and has agreed to charge the said copyhold hereditaments so devised to him by the said in part recited will with the payment to his said wife of an annuity or yearly sum of £ as and for her jointure and in lieu of dower, in pursuance of the power reserved to him in and by the same will for that purpose, and which she the said (*intended wife*) hath agreed to accept in lieu and satisfaction thereof. Now THIS INDENTURE WITNESSETH, that in pursuance of the power contained in the said in part recited will of the said (*testator*) deceased, and of all other powers and authorities enabling him thereunto, and for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to which the said (*intended wife*) will be entitled to, and which will belong to him the said (*intended husband*) in her right, upon the said marriage taking effect, HE the said (*intended husband*), for himself, his heirs, executors and administrators, doth hereby covenant, declare, and agree with and to the said (*trustees*), their heirs and assigns, that he the said (*intended husband*) shall and will at the next general customary or some special court to be previously holden for the said manor of at his own costs and charges, surrender or cause to be surrendered into the hands of the lord of the said manor according to the custom thereof, ALL that and those, &c. being part and parcel of the copyhold or customary messuages, farms, lands, tenements and hereditaments so devised to him in or by the said in part recited will of his said late father deceased, as aforesaid, with their appurtenants. AND the said (*intended husband*) doth hereby also limit, direct and appoint, and doth declare and agree with and to the said (*trustees*) and their heirs, that the said surrenders when made and perfected shall be and enure to

WITNESS.
Intended husband in consideration of wife's fortune covenants to surrender copyholds.

To the use, &c.

the uses, for the trusts, and to the intents and purposes hereinafter declared or expressed concerning the same, (that is to say,) to the use of the said (*intended husband*) and his heirs, until the said marriage shall take effect, and from and immediately thereafter to the use of him the said (*intended husband*) and his assigns during the term of his natural life, and from and immediately after his decease to the use of the said (*trustees*) and their heirs, to be holden at the will of the lord according to the custom of the said manor, and subject to the rents and reversions thereof: but nevertheless as to the estate and interest of them the said (*trustees*) therein, IN TRUST that they and the survivor of them, and the heirs of the survivors, and their or his assigns or sequels in right, do and shall by and out of the rents, issues and profits of the said hereditaments well and truly pay or cause to be paid unto the said (*intended wife*) in case she shall have survived her said (*intended husband*) one annuity or yearly sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, during the term of her natural life, free and clear of all manner of charges, abatements, and deductions whatsoever, as and for and in full lieu and satisfaction of the right or title to dower and thirds at the common law and freebench or widow's part of her the said (*intended wife*) in, to or out of all or any of the freehold or copyhold lands or hereditaments of which he the said (*intended husband*) is or may be seised or possessed of during the said intended coverture, which said annuity or yearly sum shall be paid and payable at in the county of , between the hours of 10 and 12 of the clock in the forenoon (unless elsewhere sooner demanded) by equal quarterly payments, on the day of , the day of , &c. in every year, and the first quarterly payment of the said annuity or annual sum to be computed from such of the said days of payment as shall have happened next before the decease of the said (*intended husband*), and to be paid and payable upon such of the said quarter days as shall happen next after his decease, and the last quarter's payment thereof or a due and proportionate part thereof, up to the day of the decease of her the said (*intended wife*) to be paid to her executors, administrators or assigns, within the space of one calendar month next after her decease. AND upon further trust that they the said (*trustees*) and the survivor of them, and the heirs of the survivors, or their or his assigns or sequels in right, do and shall from and immediately after the decease of the said (*intended wife*), and also during

COVENANTS.

Jointure
(copyhold).

COVENANTS.Jointure
(copyholds).

her life time, subject only to the said annuity or yearly sum, Hold the said copyhold or customary messuages, farms, lands, tenements and hereditaments, IN TRUST for the first son of the body, &c. [*as the case may be.*] [*Add usual covenants by intended husband for title, &c. (1).*] IN WITNESS, &c.

(1) See *ante*, Vol. I. p. 316, *post*. p. 395.

COVENANTS.

Jointure
(*rent-charge*).

No. CCCXV.

**A Deed of Covenant by an Intended Husband Tenant for Life, to charge Estates with a Rent-charge in lieu of a Jointure (1) at a future period in pursuance of a Power.*

THIS INDENTURE of three parts made the day of
in the year of the reign, &c. and in the year of our Lord
18 , BETWEEN (*intended husband*) of, &c. of the first part, (*in-*
tended wife) of, &c. of the second part, and (*trustees*) of, &c. [trus-
tees named and appointed on the part and behalf of the said (*in-*
tended husband) and (*intended wife*) for the purposes hereinafter
expressed] of the third part. WHEREAS, &c. [*recite settlement or*
will by which the estates are limited to the intended husband "for
life]. AND in the said in part recited indenture [*or will*] is con-
tained a proviso, and it was thereby declared that it should be lawful
for the several persons thereby made tenants for life of the said
estates from time to time during their respective lives, when they
should by virtue of the said settlement [*or will*] be respectively in pos-
session of and entitled to the rents and profits thereof, by any deed
or deeds, instrument or instruments in writing, to be sealed and de-
livered by them respectively, in the presence of and attested by two
or more credible witnesses, to grant, limit, and appoint to or to the use
of any woman or women they or he should respectively marry for
their or her lives or life, any annual sum or yearly rent-charge not
exceeding £ by the year, for every sum of £
which such woman or women should respectively be actually pos-
sessed of and entitled to, and which the person granting such jointure
should actually receive for her portion or fortune, such yearly
rent-charge to be issuing out of his said estate at afore-
said, or some part thereof, free from all deductions, with such powers

Recitals of
settlement and
power to jointure.

(1) See also *ante*, No. CCCXIII.

COVENANTS.

Jointure
(*rent-charge*).

and remedies for recovering the same, and such term and terms of years to be created for better securing the payment thereof respectively, to take effect immediately after the deaths of the persons respectively making such grants, limitations, and appointments, and the same to be made either before or after marriage, as such tenants for life might respectively think proper; PROVIDED that no such rent-charge should exceed the yearly sum of £ , and that no more than one such rent-charge should be actually payable at the same time. [AND in and by the said in part recited indenture [or will] it was further provided and declared (*if so*) that the several limitations thereinbefore contained unto the several and respective persons thereinbefore named, and their first and other sons and daughters who were intended to take beneficial interests under the said indenture [or will], and the issue male of such sons and daughters when and as they should severally come to and be in the actual possession of the messuages, lands, tenements, hereditaments, and premises thereinbefore limited to them severally and respectively as aforesaid, or any parts thereof, by virtue of the limitations thereinbefore contained, and during such time as they should respectively be in the possession of the same premises, or any of them, or any part thereof, should assume and take upon himself, herself, and themselves respectively, and continue to use the surname of [settler] only, and bear his coat of arms.] AND WHEREAS [*if a will*] the said testator departed this life on or about the day of without revoking or altering his said will, and the same was soon after his decease duly proved in the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS the said (*prior tenants for life*) have both departed this life (*or as the case was*), and the said (*intended husband*) upon the decease of the survivor of them became entitled in possession for the term of his natural life to the messuages, lands, tenements, hereditaments, and premises so limited [or devised] to him by the said in part recited indenture [or will] expectant upon such decease, and now is in the actual possession and enjoyment thereof; [and upon his so becoming entitled thereto assumed and took upon himself the name of , and bore the arms of the said [settler] and still continues to use and bear the same respectively.] AND WHEREAS a marriage has been agreed upon and is intended to be shortly had and solemnized between the said (*intended husband*) and (*intended wife*). AND WHEREAS the said (*intended wife*) is in expectation of receiving the sum of £ or some other considerable sum or sums of money from of , her father (*or as the case may be*) either during his lifetime or upon his de-

Intended marriage.

cease (1). AND WHEREAS the said (*intended husband*) is desirous of granting and limiting unto the said (*intended wife*), in the event of the said marriage taking effect, a yearly rent-charge or annual sum of £ , or such other annual sum by way of jointure, in case she should survive him, as he is or may be enabled thereunto under

COVENANTS.

Jointure
(*rent-charge*).

(1) If the father of the lady or other relation covenant to pay a sum of money within a given time after the marriage, say,

Covenant by
father to pay
sum in a given
time.

"AND WHEREAS the said (*father*) has agreed to pay the sum of £ as or for the fortune of his said daughter, within calendar months next after the said marriage shall take effect. Now THIS INDENTURE WITNESSETH that in pursuance of the said agreement on the part of the said (*father*), HE the said (*father*) for himself, his heirs, executors, and administrators, DOth hereby covenant, promise, and agree with and to the said (*husband*), his executors and administrators, and also to and with the said (*trustees*), their executors, administrators, and assigns, that he the said (*father*), his heirs, executors, or administrators, shall and will within the space or period of calendar months next after the said intended marriage shall take effect, well and truly pay or cause to be paid unto them the said (*trustees*) or unto the survivor of them, or other the trustee or trustees of these presents for the time being, the clear and full sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, as and for or in part of the fortune or marriage portion of the said (*intended wife*), his daughter, UPON THE TRUSTS and for the ends and purposes hereinafter expressed concerning the same. [AND (*if so*) the said (*father*), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*intended husband*), his executors, administrators, and assigns, and also to and with the said (*trustees*), their executors, administrators, and assigns, that the heirs, executors, or administrators of him the said (*father*) shall and will within the space or period of calendar months next after his decease, well and truly pay or cause to be paid unto them the said (*trustees*) or unto the survivor of them, or other the trustees or trustee for the time being of these presents, a further or one other full and clear sum of £ of like lawful money, as or for a further fortune or marriage portion of her the said (*intended wife*), his daughter, upon and for the like trusts, ends, intents, and purposes, as are hereinbefore referred unto and hereinafter declared or expressed concerning the sum of £ firstly hereinbefore agreed to be paid as aforesaid."

Also for pay-
ment of a fur-
ther sum on
death.

COVENANTS.

Jointure
(*rent-charge*).

WITNESS.
Intended husband covenants on receipt of lady's fortune to settle a correspondent rent-charge by way of jointure.

the power for that purpose contained in the said in part recited indenture [*or will*]; but it having been doubted whether he is competent so to do by virtue of the said power-until the said (*intended wife*) or the said (*intended husband*) in her right be in the actual possession of or entitled to receive an adequate sum as her marriage portion (1), it has been agreed that the said (*intended husband*) shall enter into such covenant as hereinafter is contained for granting the said jointure upon his or her being so actually possessed of or entitled thereto. AND it hath also been agreed by and between the said parties that when he or she shall be so possessed of or entitled thereto, the same shall be paid unto the said (*trustees*) (2), upon the trusts and for the intents and purposes hereinafter declared concerning the same. NOW THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and for making a provision for the said (*intended wife*), in case the said intended marriage shall take effect, and she shall survive the said (*intended husband*), her intended husband, HE the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said (*trustees*), their executors, administrators, and assigns, in the manner following (that is to say), that when and so soon as the said (*intended wife*) shall be entitled to the said sum of £ or any part thereof, by the gift or bequest of the said (*wife's father*), or any other sum or sums of money shall be paid unto the said (*trustees*) or other the trustees or trustee for the time being of these presents during the lifetime of him the said (*intended husband*), all and every the said sum and sums shall be taken and considered as paid and belonging to the said (*intended husband*) in whole or part (according as the said sum or sums shall amount to the said sum of £ or not) of the fortune or portion of her the said (*intended wife*), his intended wife; and upon and immediately, or as soon as may be after payment thereof, he the said (*in-*

Consideration for jointure.

Consideration of jointure may be settled.

(1) In order to the validity of a rent-charge granted by a tenant for life under a power, as against the remainder-man, the husband must actually receive or be entitled to the wife's fortune on the marriage or before the charge be created, such fortune being the equivalent or purchase-money for the rent-charge.

(2) Although the wife's portion is the consideration for the rent-charge, and therefore cannot be settled exclusively for her benefit, (for in this case she would have both the jointure and the consideration paid for it;) yet it may, at the husband's desire, be settled for the common benefit of the husband and wife and the issue of the marriage; and although the wife eventually become entitled to it by survivorship under such settlement and failure of issue, it will not prejudice her jointure; see *Tyrconnel v. D'Ancaster*, Anbl. 239. 2 Ves. sen. 501

tended husband) shall and will grant, limit, and appoint, by some deed or deeds, instrument or instruments in writing to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, such clear yearly rent-charge or annual sum, or yearly rent-charges or annual sums of lawful money of the United Kingdom of Great Britain and Ireland, unto or for the use of her the said (*intended wife*) and her assigns, during the term of her natural life, in the event of her surviving him the said (*intended husband*), as shall be after the rate of and in proportion to the annual sum of £ for every £1000, and so in proportion to any less sum than £1000, which shall be so paid to them the said trustees or trustee as aforesaid; (so nevertheless that the said yearly rent-charge or annual sum, or yearly rent-charges or annual sums, do not, after the rate or proportion aforesaid, exceed the amount or annual sum of £ in the whole, free and clear of and from all taxes, charges, and deductions whatsoever, parliamentary or otherwise,) to be issuing, growing payable, had, received, and taken out of and from, and made chargeable and charged upon all and singular the messuages, lands, tenements, hereditaments, and premises so limited [*or devised*] to him the said (*intended husband*) for his life, in or by the said in part recited indenture [*or will*] of the said (*settler*) as aforesaid, with their and every of their rights, members, and appurtenants, together with such term of years to be created and vested in the said trustees or trustee, and with such powers of entry, receipt of rents, and other powers and remedies for securing the payment thereof, as the counsel of the law of the said trustees or trustee shall reasonably require or advise. AND he the said (*intended husband*), so far as he can or lawfully may, DOTH by these presents, so executed and attested as aforesaid, direct, limit, and appoint, that upon and immediately after the said sum or portion of £ or any part thereof, or any other sum or sums not exceeding the sum of £ in the whole, shall have been paid to or received by them the said (*trustees*) or the survivor of them, or the executors or administrators of the survivor, or their or his assigns, or other the trustees or trustee for the time being of these presents, or which they or he shall under or by virtue of the said indenture [*or will*] or otherwise be entitled to in the lifetime of him the said (*intended husband*), all and singular the said messuages, lands, tenements, hereditaments, and premises shall thenceforth and immediately thereafter stand and be charged and chargeable with the payment of such annual sum or yearly rent-charge as shall be in the proportion and after the rate of the annual sum of £ for every £1000 which shall be so paid or to which the said trustees or trustee shall so become entitled to receive, and so in propor-

COVENANTS.

Jointure
 (rent-charge).

Conditional appointment by husband of the rent-charge.

COVENANTS.Jointure
(rent-charge).To hold to wife
for life.Jointure to be
payable quar-
terly.Power of
distress.

tion for any less sum than £1000, until such grant, limitation, or appointment of the same shall be made thereof in pursuance of these presents, and that as fully and effectually to all intents and purposes whatsoever, so far as the rules of law or of equity will permit, as if such grant, limitation, or appointment had been actually made and perfected, To HAVE, hold, receive, perceive, take, and enjoy the said annual sum or yearly rent-charge of £ , or other yearly rent-charge or rent-charges, or annual sum or annual sums so granted, limited, and appointed, or intended to be granted, limited, and appointed, and hereby charged or chargeable as aforesaid, unto and to the use of the said (*intended wife*) and her assigns, from and immediately after the decease of the said (*intended husband*), for and during the term of her natural life, for or in nature of a jointure; and which said yearly rent-charge or annual sum, or yearly rent-charges or annual sums, if the same shall amount to the clear yearly sum of £ , shall be in lieu, recompense, and full bar and satisfaction of and for all dower, thirds or freebench which she the said (*intended wife*) shall or may be entitled to or might have, claim, challenge, or demand of, in, to, or out of all or any of the manors, messuages, lands, tenements, or hereditaments whereof or whereto the said (*intended husband*) shall be seised or possessed for any estate of inheritance during the said intended coverture; but in case a less yearly rent-charge or annual sum, or yearly rent-charges or annual sums in the whole shall not amount to the clear yearly sum of £ then the same shall be in lieu, recompense, and satisfaction of such dower, thirds or free benefit to such extent, and in such ratio and proportion only as the clear yearly sum so to be granted, limited, appointed, and charged, shall bear to the annual sum of £ and no further or otherwise. AND it is hereby further covenanted, agreed, limited and appointed in the manner aforesaid, that all and every the said yearly rent-charge or annual sum, or yearly rent-charges or annual sums respectively to be paid and payable to her the said (*intended wife*) and her assigns shall be paid and payable yearly and every year by quarterly payments, at the four most usual days of payment in the year, (that is to say) on the twenty-fifth day of March, &c. and the first payment thereof begin and be made on such of the same days as shall first or next happen after the decease of the said (*intended husband*). AND further that in case any quarterly payments of the said annual sum or yearly rent-charge, or annual sums or yearly rent-charges or any part of such quarterly payments thereof shall be behind or unpaid by the space of fourteen days next after any of the said days for payment whereon the same ought to be paid as aforesaid, then and in such case, and

when and so often as the same shall happen, she the said (*intended wife*) and her assigns shall be given and in the mean time shall have and possess good right, full power, &c. [*to enter and distrain* (1)].

AND in case any quarterly payment of the said annual sum or yearly rent-charge, or annual sums or yearly rent-charges, or any part of such quarterly payments shall be behind and unpaid by the space of twenty-eight days next after any of the said days of payment whereon the same ought to be paid as aforesaid, then and in such case, and when and so often as the same shall happen, she the said (*intended wife*) and her assigns shall be given and in the mean time shall have and possess good right, full power, &c. [*to enter and receive the rents*, &c. &c. (2)]. [AND, &c. (3)] AND THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed

COVENANTS.
Jointure
(rent-charge).

Power of entry.

FURTHER
WITNESS.
Settlement of
wife's fortune.

(1) See *ante*, Vol. I. p. 314.

(2) See *ibid. et seq.*

(3) If the lady have a vested or assignable interest in her fortune or portion payable at a future time it may be here assigned, as,

Assignment of
wife's portion.

"AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the covenants and assurances hereinbefore contained by and on the part of the said (*intended husband*), she the said (*intended wife*), with the consent and approbation of the said (*intended husband*), testified by his signing and sealing these present, HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over unto the said (*trustees*), their executors, administrators, and assigns, all that principal sum of £ bequeathed, &c. [*as the case may be*] and to which she the said (*intended wife*) will be entitled to receive in possession upon and after the decease of E. F., or which shall be sooner paid or payable, and all interest to become due for or in respect of the same or any part thereof, and all the right, title, interest, property, claim, and demand whatsoever of her the said (*intended wife*) of, in, and to the same, To HAVE, HOLD, receive, and take the said sum of £, and all and singular or any other the sum or sums hereby assigned or intended so to be, and all remedies and means for receiving and recovering the same unto and by them the said (*trustees*), their executors, administrators, and assigns, but nevertheless upon and for the trusts, intents, and purposes, and with, under, and subject to the provisoes, declarations, and agreements hereinafter declared or expressed concerning the same. AND for the better enabling them the said (*trustees*) to receive the said sum, she the said (*intended wife*) hath made, ordained, constituted, and appointed, and by these presents doth make, &c. [*power of attorney*, as *ante*, Vol. I. p. 284.]

COVENANTS.

*Jointure
(rent-charge).*

Upon trust
after jointure/

for husband for
life.

by and between all and every the parties hereto, so far as they are respectively interested, that they the said (*trustees*) and the survivor of them, and the executors or administrators of such survivor, and their or his assigns, and all and every the trustees or trustee who shall succeed them or either of them in the trusts of these presents, in pursuance of the proviso hereinafter contained or otherwise howsoever, shall stand possessed of and interested in all and every the sum or sums of money which shall be to them or either of them paid for or on behalf of the said (*intended wife*), as or for her fortune or portion, or as or for part thereof as aforesaid, not exceeding the sum of £ , upon and for the trusts, intents, and purposes next hereinafter declared or expressed concerning the same, (that is to say), UPON TRUST as and when or as soon as conveniently may be after the said (*intended husband*) shall effectually grant, limit, and appoint such clear yearly rent-charge, or annual sum as hereinbefore is mentioned, after the rate and to the amount of the annual sum of £ for every £1000 thereof, to and for the use of the said (*intended wife*), his said intended wife, by way of jointure, during the term of her natural life in the event of her surviving, according to the true intent and meaning of the covenant or agreement hereinbefore contained in that behalf, then UPON TRUST, that they the said (*trustees*), and the survivor of them, his executors and administrators, and their and his assigns, or other the trustees or trustee aforesaid, do and shall lay out and invest the same, or so much thereof for or in lieu or consideration whereof such yearly rent-charge or annual sum, or yearly rent-charges or annual sums as aforesaid shall at any one time, and from time to time, be granted in the purchase of three per cent. Consolidated Bank Annuities, or other Bank Annuities, or invest the same upon mortgage, or such other real or Government securities at interest, as the said (*intended husband*) shall, by any writing under his hand, direct or require, in the names or name of them the said trustees or trustee, with full power and authority, for them or him from time to time, at or by the request or direction of him the said (*intended husband*), to be testified as aforesaid, to alter, change, and vary the same as he shall think proper, and do and shall stand possessed of, and interested in the stock, funds, and securities in or upon which the same shall, for the time being, be laid out or invested, and also of and in all and every the said sum or sums until the same shall be so laid out or invested, IN TRUST to pay, or cause to be paid, the interests, dividends, and annual and other proceeds thereof, from time to time, as and when the same shall be paid or payable

unto him, the said (*intended husband*) and his assigns, or otherwise permit and empower him and them to receive the same for and during the term of his natural life to and for his and their own proper use and benefit, or pay or cause to be paid the same, or any part thereof, to such person or persons as he or they by any writing under his or their hand or hands shall from time to time direct or appoint to receive the same. AND from and immediately after the decease of the said (*intended husband*), it is hereby agreed and declared, that they the said (*trustees*), and the survivor of them, and the executors and administrators of the survivor of them, and their and his assigns, shall stand possessed of and interested in the same stocks, monies, funds, and securities, and the accumulating interest, income, and proceeds thereof. IN TRUST for all and every the child and children, [*in such proportions as husband and wife shall appoint, or otherwise as may be agreed, with powers of maintenance, advancement, &c.*](1) PROVIDED ALSO, and it is hereby agreed and declared by and between the parties to these presents, that in case there shall be no child of the said (*intended wife*) by the said (*intended husband*), other than an eldest or only son, or there being such, if every son shall depart this life under the age of twenty-one years, and every daughter shall depart this life under that age, and unmarried, then, and in such case, they the said trustees and trustee, from and after the decease of the said (*intended husband*) shall stand possessed of and interested in all and every the said trust-monies, funds, and securities, so to be invested for the benefit of the said (*intended wife*) as aforesaid, and the accumulated interest and proceeds thereof; and also (whether there be any such children or child or not), do and shall stand possessed of and interested in all and every such sum and sums as the said (*intended wife*) shall have or be entitled to as her portion or fortune, beyond the sum of £ , and also such less or other sum and sums in lieu and in consideration whereof no such yearly rent-charge or annual sum shall be granted by the said (*intended husband*) as aforesaid, IN TRUST for such person and persons, to and for such ends, intents, and purposes, and in such manner as she the said (*intended wife*) alone, and notwithstanding her coverture, by any deed or instrument in writing, to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature thereof, or purport-

COVENANTS.

Jointure
(*rent-charge*).

Then for issue of
the marriage.

In default of
children.

As to wife's
fortune beyond a
given sum, and
as to so much of
fortune for which
no jointure shall
be made to wife's
appointment.

(1) See *ante*, MOD. PREC. Vol. VII. No. II. 3d ed.

COVENANTS.Jointure
(rent-charge).FURTHER
WITNESS.
Wife to enjoy
paraphernalia,
&c.Future property
of wife's to be
at her disposal.And husband to
convey, &c.

ing to be such, or any codicil or codicils, thereto, to be respectively signed and published by her in the presence of, and attested by the like number of witnesses, shall direct or appoint, and for want of, or in default of such direction or appointment, and as to so much of the said monies, funds, securities, and premises whereof no complete direction or appointment shall have been made IN TRUST for her the said (*intended wife*), if living, and if not, then IN TRUST for her next of kin, under and according to the statutes for the distribution of intestates' estates, and as if she the said (*intended wife*) had departed this life unmarried and intestate. AND THIS INDENTURE ALSO WITNESSETH, that it has been and is hereby declared and agreed by and between the parties hereto, and the said (*intended husband*) doth hereby for himself, his heirs, executors and administrators, further covenant, promise and agree to and with the said (*trustees*), their executors, administrators, and assigns, that he the said (*intended husband*) shall and will permit the said (*intended wife*) at all times during the said intended coverture, to have, receive, and enjoy all and every her trinkets and paraphernalia, for her own separate use and benefit: AND moreover, that in case the said (*intended husband*) at any time during the said intended coverture, shall become, or in case these presents had not been made, would have become entitled to in her right or interested in any real or personal estate which already hath or have descended or come, or which hereafter shall or may descend or come to the said (*intended wife*), he the said (*intended husband*), his heirs, executors and administrators shall and will permit and suffer the same to be and remain at the entire disposal of the said (*intended wife*), either for her own use, or for the use of any other person or persons to whom she shall in writing under her hand appoint the same, and his, her and their heirs, executors, and administrators; and for the better effecting the said purpose, he the said (*intended husband*), his heirs, executors and administrators shall and will join with the said (*intended wife*), in conveying, assigning and assuring the same and every or any part thereof unto her or them accordingly; and in the mean time, and until such conveyance, assignment or assurance shall be made and perfected, the same shall be by her and them had, holden and enjoyed, independently of him the said (*intended husband*), his heirs, executors and administrators, and without the same being subject or liable to his control, debts or engagements, and the receipt and receipts of the said (*intended wife*), alone or of her assigns or appointees, shall from time to time, notwithstanding her coverture, be a good and sufficient discharge for the same, and the rents, issues and profits,

interest, dividends and income thereof. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties to these presents, that nothing herein contained shall, in default of such rent-charge, or clear annual sum as aforesaid being settled or assured upon or to the use of the said (*intended wife*) for her jointure, as hereinbefore mentioned, in any way or manner prejudice or affect the right of or title to dower of her the said (*intended wife*), of or in the lands, tenements, and hereditaments of the said (*intended husband*), or her share or interest in his personal estate, under or by virtue of the statutes of distribution; and in case any such rent-charge or rents-charge, or annual sum or sums, being so settled, but which shall not amount to the clear annual sum of £ , then and in such case the same shall prejudice and affect such right or title of her the said (*intended wife*) to the extent or amount only thereof, according to the ratio or proportion hereinbefore mentioned in that behalf, and not further or otherwise. And moreover that he the said (*intended husband*), his executors or administrators, shall not be entitled to, nor shall or will claim any greater or other part of the said sum of £ , or other portion or fortune of the said (*intended wife*), than so much for, in lieu or in consideration of which he shall have previously well and effectually granted and charged such clear yearly rent-charge, or clear yearly rents-charge as aforesaid. AND the said (*intended husband*) for himself, his heirs, executors and administrators, doth hereby further covenant and declare with and to the said (*trustees*), their executors, administrators and assigns, that he the said (*intended husband*) hath not at any time heretofore made, done or executed, nor shall nor will at any time hereafter (in case the said intended marriage shall take effect) make, do or execute, or cause or procure to be made, done or executed, any act, deed, matter or thing whereby or through, or by means of which he hath been or shall or may be prevented or hindered from granting, limiting, appointing and assuring the yearly rent-charge or annual sum, or yearly rents-charge or annual sums hereby covenanted or agreed, or intended to be limited, appointed and assured to or for the said (*intended wife*) in the manner hereinbefore mentioned according to the true intent and meaning of these presents: AND further that he the said (*intended husband*), and all and every person and persons, at any time hereafter claiming from, through, under or in trust for him, as to, or in respect of the messuages, farms, lands, and hereditaments so hereby or intended to be hereby charged with the payment of the same yearly rent-charge or annual sum, or yearly rents-charge or annual sums aforesaid, shall and will, whenever thereunto lawfully

COVENANTS.

Jointure
(*rent-charge*).

Dower to be affected only to extent of jointure.

Husband will not claim wife's property beyond extent of jointure.

Covenant husband has not encumbered.

Further assurance.

COVENANTS.

Jointure
(rent-charge).

Partial jointure
not to prejudice
subsequent aug-
mentation.

Power of
changing
securities.

Power to ap-
point new trus-
tees.

or equitably required, make, do, execute, and perfect all and every or any such further or other act, deed, matter or thing whatsoever, in confirmation of these presents and the true intent and meaning thereof, as the trustees or trustee hereof, for the time being, or as she the said (*intended wife*), or her or their counsel in the law, being of the degree of a barrister, shall lawfully or reasonably require or advise: PROVIDED ALWAYS, that the grant, limitation or appointment of such jointure or jointures, or rent-charge or rents-charge by way of jointure, as hereinbefore is mentioned to be made at any one or more time or times by the said (*intended husband*), shall not be construed to hinder or prevent him at any time or times thereafter, from granting, limiting or appointing any further or other yearly rent-charge or annual sum, or yearly rents-charge or annual sums, to the use of the said (*intended wife*) and her assigns, by way of jointure, pursuant to the hereinbefore recited power, or other the power or authority enabling him thereunto. PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the parties hereto, that it shall be lawful for the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, at any time or times, and from time to time, with the approbation or consent of the said (*intended husband*), during his life, and of the said (*intended wife*) after his decease, in case she should survive him, to be signified by some writing under his or her hand, and after the decease of the survivor of them at or by the proper authority or sole discretion of the said trustees or trustee, during the minority of any child or children of the said marriage entitled under or by virtue of the trusts aforesaid to any of the said monies, funds or securities, to transfer, change or vary the same monies, funds and securities, or any of them or any part thereof as and when the same shall be deemed expedient, so that all and every the said new funds and securities, and the dividends, interests and proceeds thereof, shall at all times be upon, under and subject to such and the same trusts, powers, declarations and agreements, and for the same ends and purposes, as are hereinbefore declared or expressed of or concerning the former funds or securities, or such and so many of them as shall from time to time be existing or capable of taking effect: PROVIDED ALWAYS, and it is hereby agreed and declared by and between the parties to these presents, that if the said (*trustees*) or either of them, or any future trustees or trustee to be appointed in pursuance hereof, shall happen to depart this life or be desirous to be discharged from the trusts hereby in him or them reposed, at any

time or times before the same shall take effect, or shall be fully performed or otherwise determined, then, and in every such case, it shall be lawful for the said (*intended wife*), if such vacancy in the said trusteeship shall happen during her life-time, by any writing under her hand, notwithstanding her coverture, and if the said (*intended wife*) shall have departed this life, then for the said (*intended husband*), if living, and after the decease of the survivor of them, for the surviving or continuing trustees or trustee, or the executors or administrators of the survivor of them, under their or his hands or hand, to nominate any other person or persons to be and act as trustees or trustee in the room of him or them so departing this life or desiring to be discharged from the said trusts, and so from time to time, when and as often as any such vacancy shall happen, and upon every such appointment all and singular the said trust-monies, funds, and securities, or so much and such parts thereof as shall not have been previously disposed of under or by virtue of the said trusts, shall immediately thereafter be so assigned, transferred and assured, as that the same may be vested in the surviving or continuing trustee, together with such newly appointed trustee or trustees, or in such newly appointed trustees alone, as the case may require, as of or for the same or like estate and interest, and for and upon the same or like trusts, intents, and purposes, and with, under and subject to the same or like power and authorities as are hereinbefore declared or expressed concerning the same monies, funds, and securities, or such of them as shall be then subsisting or capable of taking effect: PROVIDED ALSO, [*usual clause of indemnity to the trustees*] (1). IN WITNESS, &c.

COVENANTS.

Jointure
(*rent-charge*).

(1) See *ante*, MOD. PRÆC. Vol. VII. p. 389. 3d ed.

COVENANTS.

*Procure
(assignment of
term).*

No: CCCXVI.

**Deed of Covenant to procure an Outstanding Term to be assigned (1).*

Recitals.

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN the (*vendtor or other grantor of the inheritance*) of, &c. of the one part, and the (*purchaser or other grantee*) of, &c. of the other part. WHEREAS, &c. [*recite the deed by which the inheritance was conveyed, and the term created.*] AND WHEREAS the trusts of the said term of years, created or raised by the said in part recited indenture of , have long since been fully executed or otherwise satisfied; AND WHEREAS on the treaty for the said purchase [*or loan, grant, or otherwise as the case may be,*] it was agreed that the residue of the said term should be assigned to a trustee for the said (*grantee*); but the said (*grantor*) being unable at present to ascertain in whom the same is now vested, the said (*grantee*) has agreed to accept of such covenant for the future assignment thereof, as hereinafter is expressed. Now THIS INDENTURE WITNESSETH, that for the considerations in the said in part recited indenture of release expressed, the said (*grantor*), for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said (*grantee*), his heirs, executors, administrators and assigns, that he the said (*grantor*), his heirs, executors or administrators, shall and will at his and their own proper expense, within the space of calendar months next after the date of these presents, or as soon

WITNESS.
Covenant to
procure assign-
ment.

(1) A covenant for this purpose, and for remedying other defects or supposed defects in a title, are often inserted in the conveyance of the premises to which such defect belongs; but this should never be done where it can be avoided, see *ante*, MOD. PREC. Vol. I. p. 401, n. (1), 3d ed. as it necessarily exposes upon the title a stain which in the opinion of a future purchaser or other transferee may or may not be delible, as it follows that a deed of this kind ought not to be made by indorsement on the conveyance. See also *ante*, MOD. PREC. Vol. I. p. 430.

thereafter as is or shall be practicable, cause and procure the residue which shall be then to come and unexpired by effluxion of time of the said term of years raised or created in or by the hereinbefore in part recited indenture mentioned to bear date on or about the day of , in all and singular or so much and such parts of the premises therein comprised, as are hereinbefore granted and released, or otherwise assured or intended so to be, to be legally and effectually assigned by the person or persons in whom the same residue shall be or appear to be vested or resident, unto or otherwise vested in, him the said (*grantee*), his heirs and assigns, or unto such other person or persons, and for such ends and purposes as he or they shall lawfully and reasonably direct or require concerning the same: AND that in the mean time, and until such assignment shall be made and perfected, the person or persons in whom the residue for the time being of the said term shall or may be vested, shall for and during all the now and then residue thereof, stand and be possessed of and interested in so much and such parts of the premises therein comprised as are hereinbefore granted and released, or otherwise assured as aforesaid, in trust for the said (*grantee*), his heirs and assigns, [if a mortgage add, subject only nevertheless to such or the like equity of redemption in or concerning the premises as in or by the said in part recited indenture of release is declared or expressed concerning the same,] and to be assigned and disposed of as he or they shall direct or appoint, and in the mean time, and until such direction or appointment shall be made, in trust to attend the reversion and inheritance of the said premises expectant upon the determination of the said term, in order to protect the same from all mesne charges and incumbrances if any such there be, and upon or for no other trust, intent or purpose whatsoever. AND further, that in case no such assignment as aforesaid can be obtained within the said space of calendar months, he the said (*grantee*), his heirs or assigns, shall or lawfully may obtain letters of administration of or to the said term, for the then residue thereof to be granted to him or them, or to such person or persons, and for such ends and purposes as aforesaid, at the cost and expence in all things of him the said (*grantee*), his heirs or assigns, which he or they shall and will well and truly pay or cause to be paid within the space of next after demand shall be to him or them made thereof (1). IN WITNESS, &c.

COVENANTS.

Procure
(assignment of
term).

In mean time
term to be
attendant.

Administration
to term.

(1) Here may be added a clause of indemnity as *post.* p. 407, n. (1). Indemnity.

COVENANTS.

*Procure
(conveyance of
fee).*

No. CCCXVII.

**Deed of Covenant to procure a conveyance of an Outstanding Legal Fee (1).*

Recitals.

WITNESS.
Covenant to
procure the fee.

THIS INDENTURE made the day of in the year of our Lord 18 . BETWEEN (*the vendor or other grantor of the inheritance*) of, &c. of the one part, and the (*purchaser or other grantee*)- of, &c. of the other part. WHEREAS, &c. [*recite the deduction of the legal estate into the person to whom it has been lastly traced, and the conveyance of the equitable inheritance to the present purchaser or other grantee.*] AND WHEREAS the heir at law of the said (*last legal possessor*) in and to whom the legal estate in fee of or in the said hereditaments was so conveyed or vested as aforesaid, cannot at present be ascertained, and the said (*vendor or other grantor*) hath agreed to enter into, and the said (*purchaser or other grantee*) to accept of such a covenant for getting in the same as hereinafter is expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the considerations in the said lastly in part recited indenture mentioned, He the said (*grantor*) DOth hereby for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said (*grantee*), his heirs and assigns, that he the said (*grantor*) his heirs, executors or administrators, shall and will within the space of calendar months from the day of the date of these presents, at his or their own proper costs and charges, cause and procure the person and persons in whom, as heir or heiresses at law of the said (*testator*) deceased or otherwise, the legal estate of or in the hereditaments hereinbefore granted and released, or otherwise assured or intended so to be, now is or shall then be vested, to con-

(1) See *ante*, p. 398. n. (1).

COVENANTS.

*Procure
(conveyance of
fee).*

vey and assure the same unto and to the use of the said (*grantee*), his heirs and assigns [*if to a mortgagee add*] (1), subject only to the right, title, or equity of redemption which, by virtue of the proviso, condition, or agreement in the hereinbefore in part recited indenture contained, shall or may be subsisting or capable of taking effect for the time being;] and that until such conveyance or assurance shall be made, the person or persons in whom the said estate is or for the time being shall or may be vested, shall stand and be seised of and interested in the same, in trust for the said (*grantee*), his heirs and assigns, and to be from time to time conveyed and disposed of as he or they shall direct or appoint [subject only as aforesaid.] (2). IN WITNESS, &c.

(1) See *ante*, p. 399.

(2) A clause of indemnity may be added here as *post*, p. 407. n. (1). Indemnity.

COVENANTS

*Production of
deeds.*

No. CCCXVIII.

A Deed of Covenant by a Vendor for the Production of Title Deeds retained by Him.

Variations where by the largest of several Lots (1).

THIS INDENTURE of parts, made the day of
[*in the year of the reign, &c. and]
in the year of our Lord BETWEEN (the vendor

Brevity.

**Purchase money
secured on the
premises.
Mojety.**

Trustees for sale.

• If it be wished that the deed should be prepared with as much conciseness as possible, such parts as are within brackets may be omitted.

(1) If a part of the purchase money is secured upon the premises, see *ante*, MOD. PROC. Vol. III. p. 555. (3d Ed.)

If the sale be of a moiety or other portion only of the premises, see *ibid.* Vol. V. p. 273.

If the covenant is entered into by trustees for sale in consequence of the largest purchaser not having completed his purchase, after reciting the conveyance of even date to the purchaser, say,

“ AND WHEREAS the title deeds, evidences and writings mentioned in the schedule hereunder written relate not only to the hereditaments so conveyed to the said (*purchaser*) as aforesaid, but also to other estates of greater value. AND WHEREAS by certain printed particulars or conditions of sale under which the said hereditaments were purchased by the said (*purchaser*), it was amongst other things declared that the largest purchaser thereof should be entitled to the deeds and evidences relating thereto upon his executing unto the purchasers of other parts of the said hereditaments the usual deed of covenant for the production of the same. AND WHEREAS the largest purchaser of the said hereditaments not having completed his purchase, the title-deeds and evidences relating to the said hereditaments remain in the custody of the said (*trustees*), who have agreed to enter into such covenant for the production

or other covenantor) of, &c. of the one part, and (the purchaser) of, &c. of the other part. WHEREAS (1) by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said (vendor) of the one part, and the said (purchaser)

COVENANTS.

Production of deeds.

Recital of conveyance to purchaser.

thereof as hereinafter is contained. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises they the said (trustees) for themselves severally and respectively, and for their several and respective heirs, executors and administrators, but not the one for the other of them, or the heirs, executors or administrators, or acts, deeds or defaults of the other of them, but each for himself only and his own heirs, executors, administrators, and his and their acts, deeds and defaults, do and each of them doth covenant," &c. *as above*.

(1) If the covenant be entered into by the purchaser of the largest lot at a sale by auction, say,

"WHEREAS the lands and hereditaments comprised in the deeds, evidences and writings mentioned in the schedule hereunder written or hereunto annexed, or some parts thereof, were on or about the day of last past, put up to sale by public

Covenant by purchaser of largest lot.

auction in several lots. AND WHEREAS, in and by the conditions exhibited at the time of the said sale, it was amongst other things declared that the largest purchaser of the said hereditaments should be entitled to the deeds and evidences relating thereto, upon his executing unto the purchasers of other parts of the said hereditaments the usual and customary deed of covenant for the production of the same, and delivering attested copies thereof at their own expense. AND WHEREAS the said (covenantor) became the largest purchaser of the said hereditaments so put up to sale as aforesaid, and the title deeds mentioned in the schedule hereunder written have accordingly been delivered to him in pursuance of the said condition, and the said (smaller purchaser) became the purchaser of other parts of the said hereditaments of smaller value which by indenture of even date herewith have been conveyed to him and his heirs. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said conditions of sale the said (covenantor), at the request of the said (vendor), testified by his being a party to and signing and sealing these presents for himself," &c. *as above*.

COVENANTS.Production of
deeds.

WITNESS.
The vendor
covenants to
produce title
deeds.

of the other part, certain messuages, lands and hereditaments therein mentioned to be situated at in the county of were conveyed and assured by the said (*vendor*) unto and to the use of him the said (*purchaser*) and his heirs. AND WHEREAS the deeds, evidences and writings comprised or mentioned in the schedule hereunder written, relate not only to the messuages, lands and hereditaments so conveyed to the said (*purchaser*) as aforesaid, but also to other estates of the said (*vendor*) of greater value, wherefore it was agreed upon the treaty for the said purchase, that the same should remain in the custody of the said (*vendor*) and his heirs, upon his entering into such covenant for the production thereof as hereinafter is contained. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said (*vendor*), for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said (*inferior purchaser*), his heirs (1) and assigns, by these presents, in manner following, (that is to say,) that he the said (*vendor*), his heirs and assigns, shall and will, from time to time, and at all or any time or times hereafter, except and subject as hereinafter is mentioned, and unless prevented by fire or other inevitable accident (2), upon every reasonable request, and at the proper costs and expense of the said (*purchaser*), his heirs or assigns, produce and shew forth, or cause and procure to be produced and shewn forth, at and upon any proper and reasonable place and occasion [in any part of the United Kingdom of Great Britain and Ireland, to the said (*purchaser*), his heirs, appointees, or assigns, or to his or their counsel, agents or attorneys, or at any trial, hearing, commission or examination in or directed by any court or courts of law or equity, or any competent court of judicature, and to any arbitrators lawfully authorized, or upon any other fit and reasonable occasion], all and every or any of the deeds, evidences and writings comprised in the schedule hereunder written

Leaseholds.

Assignees.

(1) If the premises be chattels or personalties say, "executors and administrators," instead of "heirs," here and throughout.

(2) If the covenant be entered into by assignees of a bankrupt, it should be confined to the time of their continuing assignees, see *ex parte* Stuart, 2 Rose 215. in which case add,

"So long and during such time or period as the same shall remain and be in the possession, custody or lawful power of them the said (*assignees*) or of either of them."

or hereunto annexed; and also all other deeds, evidences and writings, if any (not being of record), which relate to or concern the messuages, lands and hereditaments so conveyed to the said (*purchaser*), his heirs and assigns, as hereinbefore is mentioned, or expressed or intended so to be, or any part thereof, which now are or hereafter shall or may be in the custody or lawful power of him the said (*vendor*), his heirs or assigns, or which he or they can or may obtain or procure without action or suit at law or in equity, [for the maintenance, manifestation, defending or proving the estate, right, title, interest, property or possession of him the said (*purchaser*), his heirs or assigns, of, in or to the said premises and permit the same or any of them, or any part thereof to be read, perused and examined by him and them and his or their counsel or attorney (1).] AND also [for the like or any other reasonable purpose or purposes, shall and will, from time to time, and at all times hereafter, (unless so prevented as aforesaid), at the like request, costs and charges of the said (*purchaser*), his heirs or assigns,] make and deliver, or cause to be made and delivered to him or them, or as he or they shall direct, true and attested copies of or extracts from the same deeds,

COVENANTS.

*Production of
deeds.*

And deliver at-
tested copies
when required.

(1) A proviso for the re-delivery of title deeds when used is sometimes inserted when they are in the possession of a tenant for life, trustees or other persons in the character of guardians of them for others, in which case may be added,

Proviso for re-
delivery when
used.

“BUT so nevertheless, that upon every such delivery or production of the said deeds, evidences and writings, or any of them as aforesaid, the said (*covenantee*), his heirs or assigns, shall and do if thereunto required, sign and give to the said (*covenantor*), his heirs or assigns, an express and particular acknowledgment or receipt in writing, under his or their hand or respective hands, for the same, with a sufficient and satisfactory undertaking for the re-delivery thereof unto the said (*covenantor*), his heirs and assigns, when and as soon as the same shall have been used for the purpose or purposes aforesaid, whole, uncanceled and undefaced (accidents by fire or other unavoidable cause only excepted); and so also nevertheless, that the said (*vendor*), or his heirs or assigns, be not requested to deliver or part with the custody of the said deeds, muniments, writings or evidences, or any of them, except only in or to some open court of law or equity, or other court of judicature, and produce the same otherwise than in the presence of his, her or their own counsel, solicitor, attorney or agent.”

COVENANTS.Production of deeds.

Vendor to be
exonerated on
future sale.

writings and evidences respectively, or of any or either of them, or any part or parts of the same respectively, and permit the same to be compared and examined with the said deeds or writings, [and also that he the said (*vendor*) shall and will in the mean time, and so long as the said deeds and evidences shall be in his custody or power, use and take, and cause to be used and taken, all due and proper care to preserve and keep the same deeds, writings, and evidences, from being lost, destroyed, torn, damaged, cancelled, or otherwise defaced or injured.] PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties to these presents, that if the said (*vendor*), his heirs or assigns (1), shall at any time hereafter sell and dispose of other parts of the said estates to which the said deeds and evidences relate as aforesaid, to whom the same shall be delivered, and shall and do procure the purchaser or purchasers thereof to enter into a proper covenant with the said (*purchaser*), his heirs or assigns, for the production of the said deeds and evidences, to him and them, and writings and delivery of copies thereof in the manner aforesaid (2), then and in that case the covenants and agreements hereinbefore contained for that purpose, by or on the part of the said (*vendor*), shall from thenceforth cease and be void, and these presents shall at the request of the said (*vendor*), his heirs, executors or administrators, be delivered

Trustees for
sale.

* (1) If the covenant be entered into by trustees for sale in consequence of the largest purchaser at a sale by auction (who ought to enter into the covenant) not having completed his purchase, instead of the words in the text say,

"That if the said (*trustees*) shall at any time hereafter at their own costs and charges, or at the costs and charges of the said trust-estate, procure the largest purchaser of the said estates to which the said evidence relates as aforesaid, or any other person or persons to whom the said deeds and evidences shall be delivered to enter into a like covenant," *as above*.

Mortgagee or
annuitant.

* (2) If the covenant for production be with a mortgagee or annuitant, add,

"And shall and will, upon payment of all principal and interest monies due upon the said in part recited mortgage, [or upon the decease of the said and payment of all arrears of the said annuity or yearly sum of £] deliver or cause to be delivered up these presents to be cancelled."

up to be cancelled, [any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (1).] IN WITNESS, &c.

COVENANTS.

Production of
deeds.

THE SCHEDULE

ABOVE REFERRED TO (2).

* (1) If the deeds are supposed to be lost, and are to be delivered up when found, add, (after appropriate recitals). Deeds lost.

" And further that he the said (*vendor*), his heirs, executors or administrators, shall and will from time to time, and at all times hereafter, indemnify and save harmless the said (*purchaser*), his heirs, [executors, administrators,] and assigns, and his and their real and personal estates and effects, and also the aforesaid premises, from and against all actions, suits, costs, charges, damages and expenses whatsoever, which shall or may at any time or times hereafter be brought or commenced against him or them by any person or persons who shall claim the said premises or any part thereof, by, from, or under all or any of the said title deeds, so lost or destroyed as aforesaid, or which the said (*purchaser*), his heirs, executors, administrators or assigns, shall or may pay, expend, sustain or be put unto by reason or in respect thereof.

(2) Insert in this schedule all such deeds and evidences, including official extracts from wills, pedigrees of descent, certificates of burials, &c. as are at all necessary to substantiate a marketable title to the lands conveyed. For the form of which, see *ante*, MOD. PRAC. Vol. V. p. 60, (3d Ed.)

Deeds, &c. to
be inserted in
schedule.

COVENANTS.

*Production of
lease.*

No. CCCXIX.

*A Deed of Covenant for the Production of the original Lease by a
Lessee to an Assignee of Leasehold Premises. (1)*

THIS INDENTURE made the day of [*in the
year of the reign, &c. and in the year of our Lord 18 BE-
TWEEN (*the lessee*) of, &c. of the one part, and (*the purchaser*) of,
Recital of lease. &c. of the other part. WHEREAS by an indenture of demise or lease
bearing date the day of which was in the year and
made or expressed to be made between (*the lessor*) therein described
of the one part, and the said (*lessee*) of the other part, the said (*les-
sor*) for the consideration therein mentioned, demised and leased a
certain piece or parcel of ground therein particularly described, unto
the said (*lessee*), his executors, administrators, and assigns, from the
day of then last past, for the term of
years to be thence next ensuing, at the yearly rent of £ ,
with a covenant therein contained (inter alia) for the said (*lessee*) to
build several dwelling houses thereupon, within the time and
in the manner therein mentioned. AND WHEREAS the said (*lessee*)
hath built the said dwelling houses agreeably to the said covenant.
Contract for purchase. AND WHEREAS the said (*purchaser*) hath agreed with the said (*les-
see*) for the purchase of one of the said messuages for the residue of
the said term of years, and by an indenture of assignment
of even date with these presents, and made or expressed to be made
between the said (*lessee*) of the one part and the said (*purchaser*) of
the other part, the same hath been assigned to him accordingly.

Brevity.

(1) See notes and variations, *ante*, No. CCCXVIII. p. 402.

* If it be the wish of the parties that the deed should be prepared with as much conciseness as possible, the parts within brackets may be omitted throughout the precedent.

AND WHEREAS upon the treaty for the said purchase it was agreed that the said (*lessee*) should enter into such covenant for the production of the said in part recited lease as hereinafter is contained.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement and in consideration of the premises, the said (*lessee*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*purchaser*), his executors, administrators and assigns, in manner following, (that is to say,) that he the said (*lessee*), his executors, administrators, or assigns, shall and will from time to time and at all times hereafter, unless prevented by fire or other inevitable accident, upon every reasonable request in writing made to him or them for that purpose, and at the proper cost and expense of the said (*purchaser*), his executors, administrators, or assigns, produce and show forth, [or cause and procure to be produced and shown forth,] unto the said (*purchaser*), his executors, administrators, or assigns, or his, their, or any, of their counsel in the law, or agent, or attorney, [or at any trial, hearing, commission, or examination, in or directed by any court or courts of law or equity in any part of the United Kingdom of Great Britain and Ireland, and to any arbitrators or umpire lawfully authorised, and upon every other fit and reasonable occasion,] the said hereinbefore in part recited indenture of lease [for the maintenance, manifestation, defending, or support of the estate, interest, right, title, property, or possession of him the said (*purchaser*), his executors, administrators, or assigns, in or to the said messuages or tenements, and premises so assigned to him by the said in part recited indenture of even date herewith, or in or to any part thereof]. AND also that he the said (*lessee*), his executors, administrators, or assigns, shall and will from time to time and at all times hereafter, at the like request, costs, and charges of the said (*purchaser*), his executors, administrators, or assigns, make and deliver, [or cause to be made and delivered to him the said (*purchaser*), his executors, administrators, or assigns,] such true and attested and other copies of the same indenture, or of any parts thereof, or of any covenants, clauses or agreements therein contained, as he or they may require; and in the meantime shall and will use all proper care and means to keep the said indenture of lease safe, whole, uncanceled, and undefaced, loss or damage by fire or other inevitable accident only excepted (1). PROVIDED ALWAYS, and it is hereby declared

COVENANTS.

Production of lease.

WITNESS.

The lessee covenants to produce the lease.

And deliver attested copies.

Lessee to be exonerated on future sale.

(1) Here may be inserted a proviso for the re-delivery of the lease when used, the form of which will be similar to that given *post.* p. 415.

COVENANTS.Production of
lease:

and agreed by and between the said parties to these presents, that if the said (*lessee*), his executors, administrators, or assigns, shall at any time hereafter sell or dispose of the other of the said messuages and dwelling-houses comprised in the said indenture of lease, and deliver over the said indenture of lease to the purchaser thereof, and shall and do procure such purchaser to enter into a like covenant to that herein contained with the said (*purchaser*) for the production of the said in part recited indenture of lease, and for the delivery of copies thereof to him and them; then and in that case the covenants and agreements herein contained for that purpose, shall from thenceforth cease and be void, and these presents shall, at the request in writing of the said (*lessee*), his executors or administrators, be delivered up to him or them to be cancelled, anything herein contained to the contrary thereof in anywise notwithstanding. IN WITNESS, &c.

Stamp.

. Common deed Stamp, see *post*. Vol. III. "STAMP."

COVENANTS.

Suffer recovery.

No. CCCXX.

A Deed of Covenant to suffer a Recovery and to direct the Uses (1).

THIS INDENTURE of. parts made the
day of in the year of the reign, &c.
and in the year of our Lord 18 , BETWEEN (*the covenantor*)
of, &c. of the one part, and (*the covenantee*) of, &c. of the other
part. WHEREAS, &c (2). NOW THIS INDENTURE WITNESSETH,
that in pursuance and performance of the said agreement, and for
carrying the same into effect, and for docking, barring, and destroy-
ing all estates tail of and in the messuages, lands, tenements, and
hereditaments hereinafter described, and all remainders and rever-
sions expectant or depending thereupon, and for conveying and as-
suring the said messuages, lands, tenements and hereditaments, and
the fee simple and inheritance thereof to, upon, and for the uses,
trust, intents, and purposes hereinafter expressed concerning the

WITNESS.

The covenantor
covenants to
suffer a reco-
very.

(1) When a tenant in tail covenants to suffer a recovery to bar the remainders over, no time should be lost in perfecting it; as if he die before it be done, the issue will not be bound by the covenant, even though entered into for a valuable consideration; *Coventry v. Coventry*, 2 P. Wms. 222; or by an infant tenant in tail on her marriage, *Lecky v. Knox*, 1 Ball. and Beat. 210; because the issue comes in by the statute *de donis* alone, and not as deriving from his ancestor who contracted; *Powell v. Powell*, Prec. Ch. 278. *Fox v. Crane*, 2 Vern. 306; except only in respect of an appointment to a charity, which will bind the remainder man without fine or recovery, *Tay v. Slaughter*, Prec. Ch. 16. *Attorney Gen. v. Rye*, 2 Vern. 453; and such covenant, or even a covenant for further assurance generally, will, it seems, be binding upon the lands in the hands of assignees of the tenant in tail becoming bankrupt, or of others. See *Sutton v. Stone*, 2 Atk. 101. *Tourle v. Rand*, 2 Brow. Ch. Ca. 650, and *Edwards v. Applebee*, there cited, p. 652 (n). *Pye v. Danbuz*, 3 *ibid.* 595.

Issue not bound
by covenant of
ancestor.

(2) Recite here the occasion of the covenant being entered into.

Recitals.

COVENANTS.Suffer recovery.Parcels.Declaration of
the uses of the
recovery.

same; and also for and in consideration of the sum of 5s. of lawful money of England to the said (*covenantor*) in hand well and truly paid by the said (*covenantee*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He (1) the said (*covenantor*) for himself, his heirs, executors and administrators, DOTH covenant, promise and agree with and to the said (*covenantee*), his heirs and assigns by these presents, in manner following, (that is to say,) that he the said (*covenantor*) or his heirs shall and will at his and their own proper costs and charges, before the end of term now next ensuing, suffer or cause to be suffered one or more common recovery or common recoveries with double or treble voucher as may be requisite or expedient of ALL, &c. and that for the purpose of suffering the same common recovery or recoveries he the said (*covenantor*) and his heirs, and all and every person or persons whomsoever claiming or to claim by, from, under or in trust for him or them, shall and will make, do, and execute, and cause or procure to be made, done, and executed, all and every such acts, deeds, conveyances and assurances and matters and things in the law or otherwise, which shall be or be deemed necessary or proper to be made, done, and executed for perfecting and giving effect to the same, in and for docking and barring the estate tail of him the said (*covenantor*) of and in the said lands and hereditaments, and all remainders, and reversions, and conditional limitations thereon expectant or dependent, in order and to the intent that the same hereditaments shall and may from thenceforth and for ever thereafter be had, holden and enjoyed by him the said (*covenantee*), his heirs and assigns, in fee simple. AND it is hereby declared and agreed by and between the parties to these presents, and they hereby severally and respectively direct, appoint, and declare, that as well the said recovery or recoveries so as aforesaid, or in any other manner or at any other time or times to be had or suffered of the same premises or of any part thereof, and also all and every other recovery or recoveries, and all other conveyances and assurances in the law whatsoever already heretofore had, made, suffered or executed, or hereafter to be had, made, suffered or executed of the said premises or any part thereof, either separately or together with any other hereditaments by or between the said parties to these presents, or any of them, either alone or jointly with any

Joint-tenants.

(1) If the covenant be entered into by two or more persons, see *ante*, No. CCCIX. p. 366, n. (1).

other person or persons, or whereunto they or any or either of them was, or were, or are, or is, or shall, or may be parties or privies, or party or privy, shall from and after the perfecting thereof be and enure, and be construed, deemed, adjudged, and taken to be and enure, and the same is and are hereby declared to have been at the time of the making, suffering, and executing the same meant and intended to be and enure, and the recoveror or recoverors in such recovery or recoveries, or other assurance or assurances, or any of them named or to be named, or to whom the same have or hath been or shall or may be suffered or made, and his and their heirs shall stand and be seised of the said hereditaments and premises of which the said recovery is hereby covenanted or agreed to be had and suffered as aforesaid, with their and every of their appurtenances, To THE USE (1) and behoof of the said (*covenantee*), his heirs and assigns for ever. IN WITNESS, &c.

COVENANTS.

Suffer recovery.

(1) If the declaration be to corroborate leases granted by the tenant in tail prior to the recovery, say,

Confirmation of
subsisting leases.

"To the uses hereinafter declared concerning the same, (that is to say,) as to and concerning so much and such parts of the said lands and hereditaments as are comprised in and mentioned or intended to be demised by the hereinbefore in part recited indentures of lease, bearing date respectively, &c. To THE USE of the said (*lessees*) respectively, and their respective executors, administrators, and assigns, for the residue and remainder now to come and unexpired of and in the said several terms of years granted and demised of the same premises in or by the said indentures of lease respectively, at and under the rents, covenants, provisoes, considerations, and agreements therein respectively reserved and contained, and for the purpose of establishing and giving full force and effect to the said leases according to the true intent and meaning of the same respectively. AND subject and without prejudice thereto, then as to and concerning the same lands and hereditaments so thereby demised, and also as to and concerning all and singular other the lands and hereditaments of which a recovery is hereinbefore agreed to be suffered as aforesaid not comprised in the said indentures of lease or any of them, To THE USE and behoof of the said (*covenantee*) his heirs and assigns for ever, in fee simple."

COVENANTS.

*Deliver
title deeds.*

No. CCCXXI.

Deed of Covenant from a Mortgagee for Re-delivering Title Deeds to the Mortgagor, on Re-payment of the Mortgage Money and for producing them in the meantime (1).

Recital of mortgage.

Deposit of title deeds with mortgagee.

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN *(the mortgagee)* of, &c. of the one part, and *(the mortgagor)* of, &c. of the other part. WHEREAS by indenture of demise and mortgage bearing even date with these presents, and made or expressed to be made between the same persons as are parties hereto, certain lands and hereditaments therein particularly described, were demised unto the said *(mortgagee)*, his executors, administrators, and assigns, for the term of 500 years, for securing the repayment of the sum of £ and interest, on the day of now next ensuing. AND WHEREAS upon the execution of the said in part recited indenture the several deeds and evidences of title relating to the said hereditaments mentioned and set forth in the schedule hereunder written were delivered to the said *(mortgagee)*. AND WHEREAS the said *(mortgagee)*, at the request of the said *(mortgagor)*, hath agreed to enter into such covenant for redelivering the same unto the said *(mortgagor)*, his heirs and assigns, upon repayment of the said sum of £ with interest, and for producing them in the mean time as hereinafter is contained. Now

Intent of the deed.

(1) The principal intent of a deed of this kind is to prevent the expense of a counterpart of the mortgage deed. When therefore such a counterpart is holden by the mortgagor, this deed of covenant may be dispensed with, and where the mortgagor is tenant for life or trustee, and therefore particularly bound to take care of the title deeds for the reversioner or *cestui que* trust, or where he has himself covenanted with a purchaser or others for the production and delivery of attested copies of them, it is highly reasonable that a deed of this kind should accompany the mortgage.

THIS INDENTURE WITNESSETH, that the said (*mortgagee*) in pursuance and performance of the said agreement, doth for himself, his heirs, executors, and administrators, covenant, promise, declare, and agree with and to the said (*mortgagor*), his heirs and assigns, by these presents, in manner following, (that is to say,) that upon repayment to the said (*mortgagee*), his executors, administrators, or assigns, by the said (*mortgagor*), his heirs, executors, or administrators, of the said sum of £^l, mentioned to be the consideration-money of the said in part recited indenture, with interest for the same after the rate aforesaid, at the times and in the manner in and by the same indenture appointed for payment thereof, together with all costs, charges, and expenses which at the time of such payment shall be due unto or have been incurred by the said (*mortgagee*), his executors, administrators, or assigns, for or in respect thereof, he the said (*mortgagee*), his executors, administrators, or assigns, shall and will at the request of the said (*mortgagor*), his heirs or assigns, deliver up or cause to be delivered up unto him or them, or unto whomsoever else he or they shall under his or their hand or hands direct or appoint in that behalf, all and singular the deeds, evidences, and writings comprised in the schedule hereunder written or hereunto annexed, whole, uncanceled; unobliterated, and undefaced, accidents by fire or other inevitable cause only excepted. AND FURTHER, that he the said (*mortgagee*), his heirs, executors, administrators, and assigns, unless prevented by any such cause as aforesaid, shall and will from time to time and at all times hereafter, in the meantime and until such payment shall or ought to be made, and also so long afterwards, in case of default in payment thereof as the said deeds, evidences, and writings shall remain in his or their hands, custody, or power, and the said hereditaments and premises shall be subject or liable to any equity or right of redemption in or by the said (*mortgagor*), his heirs or assigns, at and upon the reasonable request in writing, and at the proper costs and charges in the law, of him the said (*mortgagor*), his heirs, executors, administrators, or assigns, produce and show forth, or cause to be produced and shown forth, the same deeds, evidences, and writings, or any of them, at any trial, hearing or examination in any court or courts of law or equity or other court of judicature in any part of the United Kingdom of Great Britain and Ireland, or before and for the perusal and inspection of any commissioners, arbitrator or arbitrators lawfully appointed, or in any such other manner as occasion shall require. AND also at the like request, costs, and charges of the said (*mortgagor*), his heirs, executors, administrators, or assigns, cause to be made out

COVENANTS.

*Deliver
title deeds.*

WITNESS.

The mortgagee covenants to redeliver the deeds deposited with him.

And produce them in the meantime.

And make extracts and attested copies.

COVENANTS.Deliver
title deeds.

Provided mort-
gagee's title be
not thereby en-
dangered.

and delivered to him or them, or his or their attorney or agent, a true and faithful abstract, and true and attested copies thereof, or of any of them or of any part or parts of the same respectively, for the support, manifestation, or justification of the lawful or equitable estate, right, title, or possession of the said (*mortgagor*), his heirs or assigns, in, to, or respecting the said lands, tenements, or hereditaments comprised or described therein, or in, to, or respecting any part thereof, subject to the said in part recited indenture. AND also shall and will in the mean time use his best care and means to preserve and keep the said deeds, evidences, and writings whole, uncanceled, and undefaced. PROVIDED ALWAYS, nevertheless, that such production and delivery of copies respectively as aforesaid, may in the opinion of the counsel in the law of the said (*mortgagee*) (being of the degree of a barrister), to be certified in writing under his hand, at the expense of the said (*mortgagor*), his heirs, executors, administrators, or assigns, be made and delivered without endangering or in anywise prejudicially affecting the estate, right, title, interest, claim, or demand of him the said (*mortgagee*), his executors, administrators, or assigns, in, to, or upon the said lands and hereditaments, or the security thereby afforded to him or them for repayment of the said sum of £ and interest, under or by virtue of the said hereinbefore in part recited indenture or otherwise howsoever; and so that the said deeds, evidences, and writings, or any of them, be not required to be deposited with or intrusted to the care of any person or persons whomsoever, other than some officer or officers of the court of judicature wherein the same may be required to be produced, or the counsel, solicitor, attorney, or agent of and appointed by the said (*mortgagee*), his heirs, executors, administrators, or assigns. IN WITNESS, &c.

SCHEDULE

ABOVE REFERRED TO.

Stamp.

* * * Common deed Stamp.

No. CCCXXII.

**A Deed of Covenant with a Surety for the Grantee of an Annuity to accept a sum in exoneration of further liability (1).*

THIS INDENTURE made the day of in the year, &c., and in the year of our Lord 18 , BETWEEN (*grantee of an annuity*) of, &c. of the one part, and (*grantor's surety*) of, &c. of the other part. WHEREAS by indenture bearing date, &c., made or expressed to be made between the (*grantor*) therein named and the said (*surety*) of the one part, and the said (*grantee*) of the other part, IT WAS WITNESSED, that in consideration of the sum of £ therein expressed to be paid to the said (*grantor*) and (*surety*) by the said (*grantee*), in the manner therein mentioned, the said (*grantor*) and (*surety*) jointly and severally for themselves and their respective heirs, executors, and administrators, covenanted with the said (*grantee*), his executors, administrators and assigns, that they the said (*grantor*) and (*surety*) or one of them, their or one of their heirs, executors, or administrators, should and would from time to time, and at all times thereafter, during the joint lives of the said (*grantor*) and (*surety*), and the life of the survivor of them, well and truly pay or cause to be paid unto the said (*grantee*), his executors, administrators, or assigns, one annuity or clear yearly sum of £ , by even and equal quarterly payments, to be made on the day of the day of &c., in each year: AND WHEREAS by a warrant of attorney under the hands and seals of the said (*grantor*) and (*surety*) bearing even date with the said indenture, the said (*grantor*) and (*surety*) did authorize certain attorneys therein named, jointly and severally, or any other attorney of the court of at Westminster, to appear for the said (*grantor*) and (*surety*) or

(1) This mode of exonerating the surety from further liability is adopted to prevent the principal being discharged, which would be the consequence of an actual *release* to the surety. See 8 T. R. 168. 3 Maul. and Sel. 315. 322. 1 Marsh. Rep. 603. 6 Taunt. 289.

COVENANTS.

Release
(surety).

either of them, in the said court, as of term then last, term, then next, or any other subsequent term, and to receive a declaration for them, or either of them, in an action of debt for the sum of £ , upon *mutuatus* as for so much money borrowed at the suit of the said (*grantee*), and thereupon to confess the said action, or else suffer judgment by *non sum informatus*, or otherwise, to pass against them, or either of them, in the same action, and to be forthwith entered up against them, or either of them, of record of the said court, for the said sum of £ , besides costs of suit; and by a memorandum or defeazance indorsed on the said warrant of attorney, it was declared that the said warrant of attorney and the judgment to be entered up under the authority thereof, were given and to be entered up for the purpose of securing to the said (*grantee*), his executors, and administrators, and assigns, the said annuity of £ , at the days or times, and in manner therein and hereinbefore mentioned: AND WHEREAS a judgment was in or about term, in the year of the reign of his present Majesty, entered up against the said (*grantor*) and (*surety*) jointly, under the authority of the said warrant of attorney: AND WHEREAS the said (*grantor*) is still living, and there is now due the sum of £ for quarters arrears of the said annuity up to the day of last: AND WHEREAS the said (*surety*) hath proposed to pay to the said (*grantee*) the said sum of £ , in consideration of being exonerated from all further liability in respect of the said annuity and securities which the said (*grantee*) hath agreed to accept, and enter into the covenants and agreements hereinafter contained, for the purpose of effecting such exoneration without discharging the said (*grantor*): NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*grantee*) well and truly paid by the said (*surety*) at or immediately before the execution of these presents, the receipt whereof the said (*grantee*) doth hereby acknowledge, and of and from the same doth acquit, release and for ever discharge the said (*surety*), his heirs, executors and administrators, by these presents, he the said (*grantee*) for himself, his heirs, executors and administrators, Doth hereby covenant, promise, and agree with and to the said (*surety*), his heirs, executors, and administrators, in the manner following; (that is to say) that he the said (*grantee*), his executors, administrators or assigns, shall not nor will at any time or times hereafter arrest, sue or implead, or prosecute or commence any

WITNESS.
Grantee covenants not to molest surety for breach of covenant.

action, suit or other proceedings whatsoever against the said (*surety*), his heirs, executors or administrators, whereby or by virtue or under colour whereof the said (*surety*), his heirs, executors or administrators, or his or their real or personal estate, shall or may be attached, taken in execution or otherwise molested for or by reason of any breach or non-performance already incurred, or hereafter to be incurred, of all or any of the covenants and agreements in the said in part recited indenture contained: AND FURTHER, that he the said (*grantee*), his executors, administrators or assigns, shall not nor will, at any time or times hereafter, execute any writ or process whatsoever against the said (*surety*), his heirs, executors, administrators or assigns, or his, their or any of their real or personal estate or effects, upon or by virtue of any judgment or judgments already entered up, or hereafter to be entered up under the authority of the said warrant of attorney, or otherwise in respect of the said annuity or yearly sum of £ ; and shall and will, at the request, cost and charges of the said (*surety*), his heirs, executors or administrators, acknowledge or cause to be acknowledged satisfaction on the record of any and every judgment or judgments so already entered up, and do, perform and execute all such further and other reasonable acts and deeds for the better or more satisfactorily indemnifying and securing the said (*surety*) in the premises, as shall or may be advised by the counsel in the law for or on the behalf of the said (*surety*), so nevertheless that the same or these presents do or shall not in anywise defeat, impeach or prejudice any proceedings to be had or taken against the said (*grantor*), his heirs, executors or administrators, or his or their real or personal estate, by reason or virtue of the said indenture, covenant, judgment or other securities aforesaid: PROVIDED ALWAYS NEVERTHELESS, that it shall be lawful for the said (*grantee*), his executors, administrators and assigns, to name the said (*surety*) jointly with the said (*grantor*) *pro forma*, in any proceedings on the same indenture, judgment or other security when it shall or may be necessary so to do, in order to obtain satisfaction of any monies due for arrears of the said annuity from the said (*grantor*), his executors or administrators, he the said (*surety*), his heirs, executors and administrators, being at all times indemnified and saved harmless from and against all loss, costs, charges and expenses in regard thereto. IN WITNESS, &c.

COVENANTS.

Release
(*surety*).Nor sue out
judgment.Will acknow-
ledge satis-
faction, &c.Surety's name
may be used.

COVENANTS.Stand seised.

No. CCCXXIII.

A Deed of Covenant to stand seised to the use of a Child or Relation (1).

THIS INDENTURE of two parts made the day of ,
in the year of the reign, &c. and in the year of our
Lord 18 , BETWEEN the (covenantor) (2) of, &c. of the one
part and (the covenantee) of, &c. one of the sons (3), of the said

Covenant to
stand seised.

(1) A covenant to stand seised is an instrument in writing, by which a man seised of lands, covenants, in consideration of blood or marriage, that he will stand seised of the same to the use of his child, wife, or kinsman, for life, in tail or in fee; 2 Blac. Com. 338. The only essential difference between this species of assurance and that by bargain and sale is in the consideration: where it is blood or marriage the instrument is called a covenant to stand seised; where it is money, a bargain and sale, as in both cases the estate remains in the covenantor or bargainor to the uses declared, which are executed by the statute of uses. A covenant to stand seised is one of those assurances which are technically styled harmless, as neither divesting any estate nor working any discontinuance; Gilb. Us. 297; Cart. 46. 209: and therefore when made by a tenant for life will neither create a forfeiture of his life estate nor destroy the contingent remainder depending upon it, hence it may be considered a proper conveyance by a tenant for life, in strict settlement, to enable his eldest son to suffer a recovery.

Who may convey by this instrument.

(2) No persons can convey by this species of assurance but those who are capable of being seised to an use; thus the King, Dillon v. Fraine, Poph. 72; Pawlett v. Attorney-General, Hard. 468; Jenk. 195, pl.; the Queen, Bac. Us. 59, Poph. 72; Corporations, 1 Co. 122. a.; Plow. 538; Tenants for years, Jenkins, 195; aliens or persons attainted, for they can take for no man's benefit but the king's; 1 Co. 122; Poph. 72; Sty. 40; and tenants by the courtesy; 1 Co. 122; being incapable of being seised to uses are prevented from using this species of assurance, though tenants in dower and occupants, it should seem, may, Hard. 469; Co. Lit. 239. a.; they having the land itself, while tenants by the courtesy are entitled only to the annual proceeds.

Who may take.

(3) As a covenant to stand seised will not operate to raise an use and transfer the possession to the covenantee, unless he be a relation by

(*covenantor*) [or as the case may be] of the other part. WHEREAS the said (*covenantor*) is seised of or entitled in possession (1) to the lands and hereditaments hereinafter described, and is desirous of conveying the same to the use of his son the said (*covenantee*) and his heirs. NOW THIS INDENTURE WITNESSETH, that for and in consideration (2) of the natural love and affection which the said (*covenantor*) beareth unto the said (*covenantee*) his son, and for his advancement in the world, and for other good and valuable considerations him thereunto moving, HE, the said (*covenantor*), for him-

COVENANTS.

Stand seised.

WITNESS.

That in consideration of natural love and affection.

blood or marriage; *Sharrington v. Stroughton*, Plow. Com. 307, Rob. Frauds, 107. n.; 2 Saund. Us. 90; it may be useful to state what persons have been holden capable of taking an estate under this instrument. A covenant to stand seised to the use of brother or child will be good; *Garnish v. Wentworth*, Cart. 139; *Smith v. Risley*, Cro. Car. 529; whether the estate be limited to him for life, in tail or in fee, Plow. Rep. 303; and even though such child be unborn; *Bow and Edwards*, 2 Roll. Ab. 782, 783; but not to an illegitimate child; *Worsley's Ca. Dyer* 375, pl. 16; *Frampton v. Gerrard*, 2 Roll. Ab. 785. So a man may covenant to stand seised to the use of his wife, even without any consideration expressed, *Bedell's Ca.* 7 Co. 40; *Stephens v. Britidge*, Sid. 83; or his brother's wife; *Sharrington v. Strotton*, Plow. Rep. 307; a son-in-law, *ib.* or daughter-in-law, *Bould v. Winston*, 2 Roll. Ab. 786; Noy. 122.

(1) A covenant to stand seised will only pass those lands of which the covenantor is actually seised at the time of the execution of the covenant, either in possession, remainder or reversion, it being out of the seisin of the covenantor which the use arises that the statute is to execute, *Moor* 342; *Yelverton v. Yelverton*, Cro. Eliz. 401, 402; Roll. Ab. 790, pl. 8. *Barton's ca. ib.* pl. *Wiseman's ca.* 2 Co. 15. a.

Covenantor must have actual seisin of the lands.

(2) It has been before observed, see ante n. (3), that the only good consideration is that of blood or marriage; thus considerations of ancient acquaintance or friendship; 2 Roll. Ab. 783; of being school-fellows, *ib.* and *Gilb. Us.* 48; or of an illegitimate child, 2 Roll. Ab. 785; *Dyer*, 374, pl. 16; will not raise an use: neither the consideration of the covenantee's changing his surname to that of the covenantor, *Jenk.* 81, pl. 60. The consideration for which a covenant to stand seised is entered into (*i. e.* the relationship), must be expressed in the deed, *Gilb. Us.* 115. A consideration of money is also sometimes added, but it had better be omitted, for where a man, in consideration of money, and also of marriage, covenants to stand seised, the use will arise on the latter consideration only, and consequently if the marriage do not take effect the use will never vest though the money be actually paid; *Moor*, 102; *Fearn. P. Wks.* 29; and *Lade v. Barker*, 2 Vent. 145. 266. And where the consideration is natural love and affection, no proof of any other consideration can be entered into; *Peacock v. Monk*, 1 Ves. 128. If the consideration be money it will be a good conveyance, as the statute will equally vest the possession; but its operation will be a bargain and sale, and consequently it will require enrollment.

Consideration must be blood or marriage.

COVENANTS.

Stand seised.

The covenantor will stand seised of the premises. To the use of the covenantee.

self and his heirs, DORN by these presents covenant (1), grant and agree with and to the said (*covenantee*), his heirs and assigns, that he the said (*covenantor*) and his heirs shall and will from henceforth stand and be seised of ALL, &c. (2) or howsoever otherwise the said hereditaments and premises, or any of them, now are, or is, or here, tofore were or was situated, tenanted, called, known, described or distinguished, together with all and all manner of rights, privileges, easements, advantages, appendages and appurtenances, to the same premises belonging or in anywise appertaining or with the same or any of them holden, used, occupied or enjoyed, and of all remainders, reversions, rents, issues and profits thereof, and all the estate, right, title and interest of him the said (*covenantor*) of, in, or to the same, to the use and behoof of the said (*covenantee*), his heirs and assigns, for ever. AND, &c. (3). IN WITNESS, &c.

* If the covenant to stand seised be to the use of persons within and also of those without the consideration, it will enure to those within, in exclusion of those without, see Pagett's Ca. 1 Co. 154. a. Wiseman's Ca. 2 Co. 15. a; Smith v. Risley, Cro. Car. 529; Whaley v. Tancard, 2 Lev. 52. 54.

No technical words essential in covenant to stand seised.

(1) The proper and technical words of this assurance are "covenant to stand seised to the use, &c." but as the consideration is the foundation of it, any other words, as "grant and confirm, bargain and sell, or assign," will be effectual, if such appear to be the intention of the parties, Harrison v. Austin, 3 Mod. 237. Thus a conveyance by lease and release may operate as a covenant to stand seised, where the consideration is blood, &c. Roe v. Tranmer, 2 Wils. 75; Willes 682; Doe v. Salkeld, Willes 679; Brown v. Jones, 1 Atk. 191; or a feoffment, Thomson v. Atfield, 1 Vern. 40; or by bargain and sale, Crossing v. Scudamore, 1 Mod. 175, 1 Vent. 137; Walker v. Hall, 2 Lev. 213. Osman v. Leafe, 3 ib. 370; or gift or grant, Harrison v. Austin, 3 Mod. 237; Doe v. Simpson, 2 Wils. 22. Willes 679; Stapleton v. Stapleton, 1 Atk. 8; Thorne v. Thorne, 1 Vern. 141.

No property passes by covenant to stand seised.

(2) As no one can convey by a covenant to stand seised unless he be capable of a seisin to uses, so no property will pass by it but such as can be conveyed by way of use. Thus no chattel interest can be the subject of this conveyance, though where the covenantor is seised of the freehold he may create a chattel interest out of those lands, for having a seisin in himself he is enabled as well to raise an use for years as for any greater estate. *And as no use can arise greater than the seisin out of which it is raised, it also follows that it cannot divest the estate of another, and is thence called a harmless conveyance, and may be used by persons having particular estates only, without fear of forfeiture, see Gilb. Uses 140; Seymour's Ca. 10 Co. 95; 1 Atk. 2.

Covenants for the title cannot be required in voluntary covenants to stand seised.

(3) Covenants for the title and further assurance may be added to this as to other species of deeds, but where the conveyance is a voluntary donation, such covenants cannot reasonably be called for, as they may eventually subject the covenantor to damages; they will however be useful with reference to a future sale.

* * Under the enrolment act, 27 Hen. VIII. c. 16, all bargain and sales must be enrolled, but conveyances raising uses upon considerations of blood or marriage, being neither within the words or policy of the statute, need not be enrolled, that statute referring to cases only where the uses are raised by a pecuniary consideration; Plow. Com. 307.

COVENANTS.

Stand seised.

Nor is any livery of seisin necessary to perfect a deed of covenant to stand seised, for this deed does not pass by transmutation of possession, but the use remains in the covenantor till taken out of him by the statute, by virtue of the consideration of natural love and affection; Rigden v. Vaillier, 2 Ves. 255.

Livery of seisin.

DEFEASANCE.

The precedents under this head in the last Edition will in this be found under that of WARRANT OF ATTORNEY.

DEMISE.

Forest Lands
(commissioners.)

No. CCCXXIV.

**A Demise by way of Lease of Forest Lands acquired by incroachment (1).*

THESE ARE TO WITNESS, that in consideration of the annual rent or sum of £ hereinafter reserved to be paid by (*lessee*) of, &c. the Commissioners of his Majesty's woods, forests, and land revenues [or the Surveyor-general of his Majesty's woods and forests, *as the case may be*], by the authority of the Lords Commissioners of his Majesty's Treasury for and on behalf of his Majesty, doth or do by these presents grant, demise, lease, and to farm let, unto the said (*lessee*), his executors, administrators, and assigns, ALL [*describe the parcel of land, &c.*] TO HAVE AND TO HOLD the said parcels, &c. hereby demised, and all benefit and advantage thereto belonging unto him the said (*lessee*), his executors, administrators, and assigns, for and during the term of years, yielding and paying by half-yearly payments to the said Surveyor-general or to the said Commissioners [*as the case may be*] for the time being, the annual rent or sum of £ . IN WITNESS whereof the said (*lessor*) and the said (*lessee*) have hereunto set their hands and seals this day of in the year, &c.

52 Geo. 3. c. 161.

(1) By 52 Geo. 3. c. 161. (sec. 9.) it is declared that where purpresents and incroachments have been made without disturbance for twenty years past, on the skirts or borders of his Majesty's forests, the Commissioners of woods and forests and land revenues, or the Surveyor-General thereof, with the consent of the Lord High Treasurer or Lords Commissioners of his Majesty's Treasury, are authorised to grant leases of such encroachments for a term not exceeding thirty-one years, at such rent and under such covenants, &c. as shall be thought reasonable; for which leases no fee shall be taken nor other charge made, except for writing and engrossing the same.

DEMISE.

Glebe Land
(incumbent).

No. CCCXXV.

*A Demise by way of Mortgage of Glebe Lands, &c. by an Incumbent (1).

THIS INDENTURE made the day of in the
year of the reign of his Majesty , and in the year of our
Lord 18 , BETWEEN the Reverend , rector [or vicar,
&c.] of the parish church, chapel or chapelry of , in the
county of and diocese of the Bishop of and the (mort-
gagor) of the one part, and (mortgagee) of, &c. of the other part.
WHEREAS the said (mortgagor), pursuant to the directions of an Recitals.
Act passed in the year of the reign of his (or her) Majesty
 , intituled, *An Act to Promote the Residence of the Paro-
chial Clergy, by making provision for the more speedy and effec-
tual Building, Rebuilding, Repairing or Purchasing Houses and
other necessary Buildings and Tenements for the use of their Be-
nefices*, hath obtained the consent of the ordinary of the said diocese
and the patron of the said church and living, to borrow and take up
at interest the sum of £ , to be laid out and expended in
building, rebuilding, or repairing (*as the case may be*) the par-
sonage-house and other necessary offices upon the glebe belonging
to the said church, chapel, or curacy, as appears by an instrument
signed by the said ordinary and patron hereunto annexed (2), AND

(1) By 17 Geo. 3. c. 53. (explained and amended by 21 *ib.* c. 66.) 17 Geo. 3.
parsons, vicars, and incumbents of livings not having a convenient house c. 53.
of residence, are authorized, with the consent of the ordinary and patron,
to borrow any sum of money not exceeding two years' net income of such
living, and to mortgage, as a security, the glebe, tithes, rents, and other
profits and emoluments for the term of twenty-one years, or until the
sum borrowed with interest shall be paid; and the latter of those acts,
sec. 1. provides that the incumbent shall keep down the interest and
moreover pay the sum of £5 per annum if resident and £10 if non-
resident, towards the discharge of the sum borrowed.

(2) See *ante*, p. 348.

Consent.

DEEDS.Glebe Land
(incumbent).WITNESS.
In consideration,
&c. incumbent
demises glebe,
&c.To hold for a
term of years.Covenant to re-
pay money.Nomination.
Ordinary.

WHEREAS the said (*mortgagee*) hath agreed to lend and advance the sum of £ upon a mortgage of the glebe, tithes, rents, and other profits and emoluments of the said living, pursuant to the direction and the true intent and meaning of the said act. Now THIS INDENTURE WITNESSETH, that the said (*mortgagor*) in consideration of the sum of 5s. to him in hand paid, and of the sum of £ , (*sum advanced*) paid on or before the sealing and delivery hereof, into the hand of , of, &c. (a person [or persons *as the case may be*] nominated by the said ordinary, patron and incumbent to receive the same, pursuant to the direction of the said Act (which nomination is also hereunto annexed (1)), and which receipt of the said sum of £ the said (*mortgagor*) has or hath acknowledged by an indorsement on the back of this deed), HATH granted, bargained, sold and demised, and by these presents DOTH grant, bargain, sell, and demise unto the said (*mortgagee*), his executors, administrators, and assigns, all the glebe, lands, tithes, rents, moduses, composition for tithes, salaries, stipends, fees, gratuities and other emoluments and profits whatsoever, arising, coming, growing, renewing, or payable to the rector, vicar, or incumbent (*as the case may be*) of the said living in respect thereof, with all and every the rights, privileges, and appurtenants thereunto belonging, TO HAVE, receive, take, and enjoy the said premises with their and every of their appurtenants unto the said (*mortgagee*), his executors, administrators, and assigns, from henceforth for and during the term of years, fully to be complete and ended, in as full, ample, and beneficial manner and with such remedies and powers for obtaining and recovering the same, and every part thereof, to all intents and purposes as the said (*mortgagor*), his successors, rectors, vicars, &c. (*as the case may be*) of the said church, could or might or ought to have held, enjoyed, and received, taken, or recovered the same, if these presents had not been made. [(2) AND the said A. B. for himself, his heirs, executors, and administrators, DOTH hereby covenant, promise, and agree to and with the said (*mortgagee*), his executors, administrators, and assigns, that he the said (*mortgagor*) during the time he shall continue rector or vicar, &c. of the said parish and parish church, shall and will well and truly pay or cause to be paid

(1) See the nomination, *ante*, Vol. I. No. LXXIII. p. 239.

(2) In cases where the mortgage is by the act directed to be made by the ordinary and patron alone, without the incumbent, this covenant and proviso are to be omitted, and the form is to be varied in such other respects as shall be necessary.

unto the said (*mortgagee*), his executors, administrators, and assigns, interest of the said sum of £ , or so much thereof as shall remain due at the end of the year, to be computed from the day of the date of these presents, after the rate of per cent. per annum, by yearly payments, the first of the said payments to begin and be made on the day of next; and also at the several times before mentioned for payment of the interest as aforesaid, shall and will well and truly pay or cause to be paid the sum of £5 per cent. per annum of the principal which remained due at the beginning of the year in which every such payment is to be paid, in case the said (*mortgagor*) shall be resident upon the said living for the time mentioned in and according to the true intent and meaning of the said act; and in case the said (*mortgagor*) shall not reside upon the said living during the time mentioned in and according to the true intent and meaning of the said act, he shall pay or cause to be paid the sum of £10 per cent. per annum of the said principal money, by such yearly payments as aforesaid, instead of the said sum of £5 per cent. per annum, and shall and will continue such respective payments of the said interest, and on account of the said principal money so long as he shall continue rector, vicar, &c. (*as the case may be*) of the said parish and parish church, unless all the said principal and interest for the same, shall be sooner paid and discharged. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said (*mortgagor*) and his successors shall well and truly pay or cause to be paid the said principal money and interest for the same in manner and at the times aforesaid, according to the true intent and meaning of the said act and of these presents; and also all costs and charges which shall have been occasioned by the non-payment thereof, these presents and every thing herein contained shall cease and be void. PROVIDED ALSO, that it shall and may be lawful for the quiet enjoyment till default the said (*mortgagor*) and his successors, peaceably and quietly to hold, occupy, possess, and enjoy all and singular the said glebe, land, tithes, rents, moduses, composition for tithes, stipend, fees, gratuities, and other emoluments and profits whatsoever arising or to arise from or in respect to the said living, until default shall be made by him or them respectively, in payment of the interest and principal or some part thereof at the times and in the manner aforesaid. IN WITNESS, &c.

Remark.

Glebe Land
(incumbent).

Proviso for redemption.

Quiet enjoyment till default.

* * * The above cited act, sec. 2., requires that the mortgagee shall execute a counterpart of the mortgage deed to be kept by the incumbent, and that a copy of such mortgage shall be registered in the office of the registrar of the bishop of the diocese.

Counterpart.

DEMISE.

Prevent
forfeiture
(life estate).

No. CCCXXVI.

**Demise by Tenant for life remainder to his Issue unborn, remainder in fee to himself, in order to guard against Forfeiture on his barring the remainder by Fine (1).*

Variations where the purpose is intended to be effected by an assignment of a subsisting term (2).

THIS INDENTURE made the day of (3) in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN (*tenant for life*), of, &c. of the one part, and (*lessee being a trustee*), of, &c. of the other part. WHEREAS, &c. [*recite a deduction of title to the tenant for life, remainder to children, remainder to himself in fee*]. AND WHEREAS the said (*tenant for life*) is of the age of or thereabouts, and the said (*his wife*) of the age of and upwards, and there has not been any issue of the said (*tenant for life*) by his said wife. AND WHEREAS the said (*tenant for life*) is desirous of suffering a recovery in order to bar all remainders over expectant upon the failure of issue of him the said (*tenant for life*) and acquire the inheritance in fee-simple of the said hereditaments. NOW THIS INDENTURE WITNESSETH, that for the considerations hereinafter mentioned, HE the said (*tenant for life*) HATH demised, leased, set and to farm letten, and by these presents DOTH demise, lease, set and to farm let, unto the said (*lessee*), his executors, administrators and assigns, ALL, &c. or howsoever otherwise the said messuages, lands, tenements and hereditaments, or any of them, now are or is or heretofore were or was situated, tenanted, called,

WITNESS.
Tenant for life
demises.

Parcels.

(1) See as to the doctrine on this mode of acquiring a fee, 1 Prest. Conv. 468. 472; 2 ib. 502. 520. ib. xxxii. (after table of cases); Sug. Vend. and Pur. (6th edit.) p. 261. n. (1); also *post.* p. 495, n. (1).

(2) See *post.* Rider A. p. 431.

(3) The day before the *feoffment*, &c. see *post.* p. 496, notes.

known, described or distinguished, TOGETHER with all houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, feeding and foldage of every kind, and all and all manner of other rights, privileges, easements, advantages, conveniences, appendages and appurtenants whatsoever to the said messuages, lands, tenements, hereditaments and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied or enjoyed. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity of him the said (*tenant for life*), in, to, out of, upon or respecting the said hereditaments and premises, or any of them, for and during the term hereinafter mentioned. To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and demised or otherwise assured or intended so to be with the appurtenants unto him the said (*lessee*), his executors, administrators and assigns, from the day next before the day of the date of these presents, for and during the full and complete term of ninety-nine years thence next ensuing, if he the said (*tenant for life*) shall so long live, to the intent to prevent any advantage being taken of any forfeiture, merger or extinguishment of any particular estate of or in the said premises by reason of the said intended fine, recovery or otherwise, and to and for the sole use and benefit of him the said (*tenant for life*), his heirs and assigns, for ever, YIELDING and paying therefore yearly and every year unto the said (*tenant for life*) the rent of one pepper corn on the day of in every year, if lawfully demanded. AND the said (*lessee*), for himself, his executors and administrators, doth hereby covenant, promise and agree to and with the said (*tenant for life*) and his assigns, that for and notwithstanding the demise hereinbefore contained, he the said (*lessee*), his executors, administrators and assigns, shall and will at all times hereafter during the continuance of the said term of ninety-nine years so demised to him as aforesaid, permit and suffer him the said (*tenant for life*) and his assigns, to take, receive, hold, possess and enjoy all and singular the rents, issues, profits

DEMISE.

Prevent
forfeiture
(life estate).

To hold for a
term of years.

At the rent of a
pepper corn.

Covenant by
lessee to permit
tenant for life to
receive the rents,
&c.

DEMISE.

Prevent
forfeiture
(life estate).

and proceeds issuing or payable out of or from the said messuages, tenements, lands, hereditaments, and premises, or any part thereof, any rule of law or in equity to the contrary thereof notwithstanding.
IN WITNESS, &c.

. See Declaration of Trust to accompany the above Precedent, *post.* Vol. III. "TRUST."

DEMISE.

*Prevent
forfeiture
(life estate).*

Rider A.

**Variation to the preceding Precedent where a subsisting term is assigned.*

WHEREAS by an indenture of mortgage bearing date the day of , which was in the year , and made or expressed to be made between (*the mortgagor*) therein described, of the one part, and (*the mortgagee*), also therein described, of the other part, the said (*mortgagor*), for the considerations therein mentioned, granted and demised, ALL, &c. (1) TO HOLD the same unto the said (*mortgagee*), his executors, administrators, and assigns, from the date thereof, for the term of 1000 years, by way of mortgage, for securing the payment of the sum of £ , and interest, in the manner therein expressed. AND WHEREAS default was made in the payment of the said sum of £ at the time in the said indenture mentioned for payment thereof, whereby the estate and interest of the said (*mortgagee*) in the said hereditaments became absolute at law for the residue of the said term. AND WHEREAS the said (*mortgagee*) did in term, in the year of the reign of his present Majesty, exhibit his bill in his Majesty's High Court of Chancery against the said (*mortgagor*), in order to be paid the principal and interest due on his said mortgage, or in default thereof that the said (*mortgagor*) might stand absolutely foreclosed from all equity of redemption of and in the said mortgaged premises. AND WHEREAS by a decree or decretal order of the said court, bearing date on or about the day of , and made in the said cause, it was ordered and decreed, that the said (*mortgagor*) should stand absolutely debarred and foreclosed of and from all equity and right of redemption whatsoever, of, in or to the said mortgaged premises. AND WHEREAS by an indenture bearing date the day of , which was in the year , and made or expressed to be made between the said (*mortgagee*) of the one part, and

Recital of mortgage.

Default in payment.

Bill of foreclosure.

Assignment of premises to the termor.

(1) Insert here a particular description of the premises from the mortgage deed:

Parcels.

DEMISE.

*Prevent
forfeiture
(life estate).*

Termor desirous
of acquiring the
fee.

WITNESS.
That in consi-
deration, &c.

The termor as-
signs.

Parcels.

the said (*termor*) of the other part, the said (*mortgagee*) in considera-
tion of the sum of £ , assigned all and singular the premises
comprised in the hereinbefore in part recited indenture of mortgage
of the day of unto the said (*termor*), his exe-
cutors, administrators and assigns, for all the residue then to come and
unexpired of or in the said term of 1000 years. AND WHEREAS the
said (*termor*), being desirous of obtaining seisin of the freehold and
reversion of the said hereditaments and premises by means of a feoff-
ment and livery to be had thereupon (which said indenture of feoffment
is already prepared and engrossed, and bears or is intended to bear date
the day next after the date of these presents), hath requested the said
(*trustee*) to accept of an assignment of the said premises for the residue
now to come of the said term of 1000 years, upon the trusts hereinafter
declared. NOW THIS INDENTURE WITNESSETH, that for the purposes
aforesaid [* and also for and in consideration of the sum of 5s. of law-
ful current money of England to the said (*termor*) in hand well and truly
paid by the said (*trustee*) at or before the sealing and delivery of these
presents, the receipt whereof is hereby acknowledged], He the said
(*termor*) [HATH granted, bargained, sold, assigned, transferred and
set over, and by these presents] DOTH grant, bargain, sell, assign,
transfer and set over unto the said (*trustee*), his executors, administra-
tors and assigns, ALL those the said several messuages, lands, tene-
ments, hereditaments, and all and singular other the premises comprised
in and expressed to be demised by the hereinbefore in part recited in-
denture of mortgage of the day of , and afterwards
assigned and transferred unto the said (*termor*) by the said in part re-
cited indenture of assignment of the day of , as
hereinbefore is mentioned; (and which said messuages, lands, tene-
ments and hereditaments are the same messuages, lands, tenements and
hereditaments as are intended to be comprised in, and conveyed and
assured by a certain indenture of feoffment hereinbefore referred to, as
bearing or intended to bear date the day next after the day of the date
of these presents); and all the estate, right, title, interest, term or
number of years now to come and unexpired, trust, property, posses-
sion, claim, and demand whatsoever, both at law and in equity, or
otherwise howsoever, of him the said (*termor*), of, in, to, or respect-
ing the same messuages, lands, tenements, hereditaments and premises,
and every or any part thereof, together with the said several herein-
before in part recited indentures of demise and assignment, and all
benefit and advantage incident or belonging to the same or either

Brevity.

* Where brevity is particularly desired, the parts of the precedent within brackets may be omitted.

of them, or to the covenants and agreements therein respectively contained. TO HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, and [all and singular other the] premises [hereby assigned or otherwise assured, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances,] unto the said (*trustee*), his executors, administrators, and assigns, from henceforth, for and during all the residue or remainder which is or may be yet to come and unexpired of or in the said term of 1000 years [in and by the said hereinbefore in part recited indenture of the day of expressed to be demised to the said (*mortgagee*) as aforesaid]; But IN TRUST nevertheless for the said (*termor*), his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall direct or appoint concerning the same or any part thereof; and in the meantime and until any such assignment, disposition, direction, and appointment shall be made, and when made then subject thereto, IN TRUST and to the end and intent that the residue for the time being of the said term and estate hereby expressed or intended to be assigned shall and may attend and wait upon the freehold, reversion, and inheritance so mentioned or intended to be acquired (1) by him the said (*termor*), by means of the said indenture of feoffment hereinbefore referred to, of and in the lands, tenements, hereditaments, and premises therein comprised, for the sole and only proper use and benefit of him the said (*termor*), his heirs and assigns, in order to protect and defend the said messuages, lands, tenements, and hereditaments from and against all subsequent and intermediate incumbrances, if any such there be [and IN TRUST that he the said (*trustee*), his executors, administrators, and assigns, shall and do permit and cause the said term and estate to be used and disposed of for that purpose accordingly, and to, for, or upon no other trust, intent, or purpose whatsoever] (2). IN WITNESS, &c.

DEWISE.

*Prevent
forfeiture
(life estate).*

To hold to the trustee for the residue of the term.

Upon trust to attend the inheritance to be acquired by the feoffment.

(1) As a term assigned to or otherwise vested in a trustee will, unless controlled by express declaration to the contrary, attend and wait upon the inheritance of the *rightful* owner of the fee, it is necessary in the present case to declare expressly that it shall attend the fee to be acquired by the termor under the deed of feoffment and fine proposed to be executed.

Necessary to declare what inheritance term shall attend.

(2) The covenant by the termor that he has not done any act to incumber, which is usually inserted in assignment of terms, it will be perceived is in this case unnecessary, as the beneficial interest in the term still remains in the termor himself.

Covenant against incumbrances unnecessary.

DEMISE.Preserve
powers
(leasing).

No. CCCXXVII.

Demise by Tenant for life to a Purchaser for a term of years, if Tenant for life shall so long live, in order to preserve powers of leasing, &c. (1).

THIS INDENTURE of two parts made the day of
 Parties. in the year, &c. and in the year of our Lord 18 , BE-
 TWEEN (*the tenant for life*) of, &c. of the one part and (*the pur-*
 Recital of settle- chaser) of, &c. of the other part. WHEREAS by indentures of lease
 ment creating and release bearing date respectively the and days of
 the life estate. which was in the year , the release being of parts,
 and purporting to be a settlement made on the marriage of the said
 (*tenant for life*) with his wife, and made or expressed to be
 made between the said (*tenant for life*) of the first, the said (*wife*) of
 the second part, and (*the trustees*) therein described of the third part,
 the messuages, lands, and hereditaments hereinafter described were
 conveyed and assured unto the said (*trustees*) and their heirs, to the
 use of the said (*tenant for life*) and his assigns, for the term of his
 natural life, with divers remainders over, as by the said in part re-

Powers annexed
 to life estate
 destroyed by
 conveyance.

(1) Where a tenant for life with a power to grant leases, conveys away the whole of his life estate, the power is extinguished; *Renn v. Berkeley*, 1 Doug. 292; hence where he wishes to part with his estate and at the same time preserve his powers, the premises may be demised to the purchaser for a long term of years, determinable upon the death of the tenant for life (who covenants with the purchaser to execute the powers as he shall direct), and a declaration inserted that the demise shall not affect but be subservient to the powers, by this means (an estate for years determinable on lives being in contemplation of law a less estate than an estate for life) a reversion is left in the tenant for life, and the purchaser taking the estate subject to the power, the power may be executed in the same manner as if no part of the estate had been parted with.

cited indenture, reference being thereunto had, will more fully appear.

AND WHEREAS in the said in part recited indenture of settlement there is amongst other things contained, a power or authority enabling the said (*tenant for life*) from time to time (1), by indenture or indentures under his hand and seal, to demise or lease, or limit or appoint by way of demise or lease for any term or number of years not exceeding twenty-one years, to take effect in possession and not in reversion or by way of future interest, all or any part of the messuages, lands, and hereditaments thereinbefore granted and released to any person or persons whomsoever, so that there should be reserved upon every such demise or lease, or limitation or appointment by way of demise or lease, the best and most improved yearly rent or rents which could reasonably be obtained for the same, to be incident to the immediate reversion thereof, and so that there should be contained therein a covenant for payment of the rent or rents to be thereby reserved, and a condition of re-entry on non-payment thereof for the space of twenty-one days next after the time thereby appointed for the payment of the same, and all other usual and proper covenants and agreements on the part of the tenant or tenants thereof to be performed or observed, and so that the lessees to be therein respectively named should not be made dispunishable for waste, and so that every such lessee should execute a counterpart of the said lease.

AND WHEREAS the said (*purchaser*) having contracted with the said (*tenant for life*) for the absolute purchase of the said messuages, lands, and hereditaments, for the life of him the said (*tenant for life*) at the sum of £ , it hath been agreed between the said parties that the said (*tenant for life*) shall demise the same premises to the said (*purchaser*) for the term of ninety-nine years if he the said (*tenant for life*) shall so long live, in order to preserve the power of leasing annexed to his said estate for life. Now THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*tenant for life*) in hand well and truly paid by the said (*purchaser*), at or before the sealing and delivery of these presents, the receipt whereof, and that the same is in full, for the absolute purchase of the said premises during the said term,

DEMISE.

Preserve
powers
(leasing).

Of power to
lease.

Contract for
purchase.

WITNESS.

That in consid-
eration of the
purchase money

(1) It will be proper that the power to lease should be fully recited in order that the purchaser may know what leases he can require the vendor to execute. Power should be fully recited.

<p>DEMISE.</p> <hr/> <p>Preserve powers (leasing).</p> <hr/>	<p>if he the said (<i>tenant for life</i>) shall so long live, the said (<i>tenant for life</i>) doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge the said (<i>purchaser</i>) as well by these presents as by the receipt or acknowledgement for the same sum hereupon indorsed, He the said (<i>tenant for life</i>) HATH granted, demised, and leased, and by these presents DOth grant, demise, and lease unto the said (<i>purchaser</i>), his executors, administrators, and assigns, ALL, &c. or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; together with all houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, feeding, and foldage of every kind, and all and all manner of other rights, privileges, casements, advantages, conveniences, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed, and the rents, issues, profits, and proceeds to arise or become payable for or in respect of the same or of any part thereof, from the day of now last past. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity, of him the said (<i>tenant for life</i>) in, to, out of, upon, or respecting the said hereditaments and premises, or any of them, for and during the said term (1), TO HAVE AND TO</p>
<p>The tenant for life grants and demises.</p>	
<p>Parcels.</p>	
<p>General appurtenances.</p>	

Title deeds.

(1) This being a demise for a term of years only, by the tenant for life, it is conceived that the lessee is not entitled to the deeds any more than in other cases of tenants for years, particularly as the reason of a tenant for life having the custody of them was by the feudal law to enable him to answer the præcipe of strangers for the benefit of the reversioner, but as it is intended to be and is in substance a conveyance of the whole interest of the tenant for life, though in the form of a demise, merely for the purpose of preserving to the lessee the powers of leasing, &c. annexed to the estate, the purchasing lessee may possibly be considered

HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and demised or mentioned or intended so to be, unto the said (*purchaser*), his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the full and complete term of ninety-nine years thence next ensuing, if he the said (*tenant for life*) shall so long live, but not longer or otherwise, YIELDING and paying therefore yearly and every year unto the said (*tenant for life*) the rent of one peppercorn on the day of in every year if lawfully demanded. AND it is hereby declared and agreed that the grant and demise hereinbefore contained shall not operate or be deemed or considered as operating to extinguish or prejudice the powers of demising or leasing hereinbefore recited, or other the powers reserved or given to the said (*tenant for life*) by the hereinbefore in part recited indenture of settlement of the day of , but that these presents shall be and be considered as subservient to the said powers in all things whatsoever. AND the said (*tenant for life*), for himself, his heirs, executors, and administrators, and for every of them, BOTH hereby covenant, declare, grant, and agree with and to the said (*purchaser*), his heirs, executors, administrators, and assigns, and with and to each of them, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter or thing whatsoever at any time heretofore made, done, executed, occasioned, suffered, or omitted by him the said (*tenant for life*) to the contrary, he the said (*tenant for life*) now hath in himself full power and lawful and absolute right and title to grant, demise, and lease all and singular the said hereditaments and premises, and the possession thereof, unto the said (*purchaser*), his executors, administrators, and assigns, for the said term or period of ninety-nine years if he the said (*tenant for life*) shall so long live, in the manner aforesaid, and according to the true intent and meaning of these presents. AND FURTHER, that it shall and may be lawful for the said (*purchaser*), his executors, administrators, and assigns, immediately upon the sealing and delivery of these presents, and at all times thereafter, during the said term of ninety-nine years

DEMISE.

*Preserve
powers
(leasing).*

To hold for 99
years if tenant
for life so long
live.

Declaration that
demise shall not
extinguish
power of leasing.

Covenant by
vendor that he
hath right to
demise.

That the pur-
chaser shall
quietly enjoy.

as equally entitled to the deeds, for the manifestation of the title in this, as in other cases of purchases, and if this be conceded to him it will be proper that he should enter into a covenant with his lessor by separate deed to redeliver them to the reversioner when required, and to produce them in the mean time. The form of this deed will be nearly similar to that given *ante*, No. CCCXVIII. p. 402.

DEED.Preserve
powers
(leasing).Free from in-
cumbances.Covenant for
further assu-
rance.

if he the said (*tenant for life*) shall so long live, to enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, with their and every of their respective rights, privileges, conveniences, and appurtenances, and to receive and retain the rents, issues, profits, and proceeds, which shall arise or be payable for or in respect of the same from and after the day of now last past, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*tenant for life*) or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under or in trust for him. AND that free and clear and clearly and absolutely discharged and exonerated or otherwise by and at the expense of the said (*tenant for life*), his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all former and other feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been or which at any time hereafter during the said term of ninety-nine years, if he the said (*tenant for life*) shall so long live, shall or may be made, created, executed, committed, occasioned, or suffered by or with the procurement or privity of the said (*tenant for life*) or any other person or persons now or hereafter rightfully claiming or having title to claim any estate, right, title or interest, either at law or in equity, from, through, under, or in trust for him (the land and sewers tax, and the present or any future tax upon property or income, to become due or payable for or in respect of the same premises or any of them from and after the said day of last past only excepted). AND MOREOVER that he the said (*tenant for life*) and his heirs, and all and every other person or persons now or at any time hereafter rightfully claiming or having title to claim any estate, right, title, charge or interest at law or in equity, in, to, out of, upon or respecting the hereditaments and

premises hereinbefore demised or otherwise assured, or mentioned or intended so to be, or any part thereof, from, through, under, or in trust for him, shall and will from time to time and at all times hereafter during the said term of ninety-nine years, if he shall so long live, upon every reasonable request, and at the costs and expenses of the said (*purchaser*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed and perfected, with all convenient and proper dispatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, matters and things whatsoever, whether by fine or fines, with or without proclamations, common recovery or recoveries, deed or deeds enrolled or not enrolled, release, confirmation, declaration or limitation of or to any use or uses, or other assurance or assurances, of record or not of record, for the further, better, more perfectly, fully, absolutely, and satisfactorily granting, demising, and assuring the messuages, lands, tenements, hereditaments and premises hereinbefore granted, demised and confirmed, or mentioned or intended so to be, and every or any part or parcel thereof, and the possession of the same, with their and every of their respective rights, privileges, members, appendages and appurtenances, unto and to and for the use and benefit of the said (*purchaser*), his executors, administrators and assigns, for and during the term of ninety-nine years, if he the said (*tenant for life*) shall so long live, in such manner and form as he the said (*purchaser*), his executors, administrators or assigns, or his or their counsel in the law, being of the degree of a barrister at the least, shall advise and require, and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses. AND FURTHER that he the said (*tenant for life*) shall and will from time to time and at all times hereafter, during the said term of ninety-nine years hereby granted, if he shall

DEEMED.

Preserves
powers
(leasing).

Covenant by
tenant for life to
execute powers
of leasing.

DEMISE.

Preserve
powers
(leasing).

so long live, upon every reasonable request of the said (*purchaser*), his executors, administrators, and assigns, duly exercise and execute the powers of leasing so given to him by the said in part recited indenture of release, by demising or letting or limiting or appointing by way of demise or lease, all or any part of the said messuages, lands, and hereditaments hereby granted and demised, or mentioned or intended so to be, or otherwise join and concur in granting or demising or limiting and appointing the same, or any part or parts thereof, to or in favour of such person or persons, and at and for such rent, or other rent or sums, and for such lawful term or terms of years, and otherwise, to and for the sole use and benefit of him the said (*purchaser*), his executors, administrators, and assigns, as he the said (*purchaser*), his executors, administrators, and assigns, shall lawfully nominate or appoint concerning the same. IN WITNESS, &c.

DEPOSITION.

 Certificate
 (baptism, &c.)

No. CCCXXVIII.

**A Deposition verifying a Certificate of Baptism, Burial or Marriage.*

(*The Deponent*) of, &c. maketh oath and saith that he this deponent hath carefully examined the paper writing hereto annexed, with the original entry thereof in the book of the register of Baptisms [*or Burials or Marriages*] kept at in and for the parish of in the county of and that the same is a true and correct copy therefrom, and in the same words and figures as in the said registry is contained or mentioned, and that he this deponent was present and did see the Rev. [Rector, Clerk, *or as the case was*] of the said parish extract the same from the said registry, and afterwards sign the same, and that the name of the said (Rector, &c.) thereunto subscribed is the proper hand writing of him the said (Rector, &c.)

SWORN, &c.

(Name).

. See *post.* Vol. III. "STAMP," *Sched.* "AFFIDAVIT."

Stamp.

DEPOSITION.Clerk's service.

No. CCCXXIX.

** A Deposition of the service of a Clerk under Articles (1).*

(*The Clerk*), gentleman, maketh oath and saith that he hath really and truly served and been employed by (*attorney*) of, &c. gentleman, as his clerk in the practice of an attorney and solicitor for the full term of five years pursuant to the articles hereunto annexed; and this deponent further saith that he did previous to the commencement of the last term affix his name and place of abode, and also the name and place of abode of the said (*attorney*) in the King's Bench office, and on the outside of the Court of King's Bench in Westminster Hall, and that he did also previous to the same term enter his name and place of abode as well as the name and place of abode of the said (*attorney*) in a book kept for that purpose at the chambers of each of the judges of his Majesty's said Court of King's Bench.

SWORN, &c.

(*Name*).

(1) See *ante*, Vol. I. No. CXXV. p. 438. notes.

Stamp.

* * See *post*. Vol. III. "STAMP," *Sched.* "AFFIDAVIT."

DEPOSITION.Debt
(bankruptcy).

No. CCCXXX.

**A Deposition of a Debt owing to support a Commission of Bankruptcy, where the Bankrupt was an Underwriter.*

(The deponent-creditor) maketh oath and saith that (bankrupt) of, &c. the person against whom a commission of bankruptcy hath been awarded and issued and is now in prosecution, was at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent and to this deponent's partiers in trade (if such the case), in the sum of £ by virtue of a policy of insurance made out in the name of A. B. and E. F., and subscribed by the said (bankrupt) on or about the day of and before he the said (bankrupt) became bankrupt for the sum of £ upon goods as might be thereafter declared, to pay average on each package separately insured by order of this deponent and his partners, loaden or to be loaden on board of the ship Sally, master, for a voyage at and from, [as the policy expresses,] at the rate of per cent. AND this deponent further saith, that an average loss hath accrued on the said policy, which said average loss the said (bankrupt) and the other underwriters on the day of now last past, adjusted and settled at £ per cent. by subscribing their names or initials to an indorsement written upon the said policy in the words and figures following, to wit: "London, May, 18 . Adjusted an average of £ per cent. £ ." AND this deponent further saith, the said (bankrupt) is also indebted unto this deponent and to this deponent's said partner, in the sum of £ , by virtue of a certain other policy of assurance made out in the name of A. B. and E. F., and subscribed by the said G. H. for the said C. D., on or about the day of before he the said C. D. became a bankrupt for the said sum of £ upon goods as per margin, thereof to pay average on each package insured by order of this deponent and his said partners, loaden on board of and

DEPOSITION.Debt
(bankruptcy).

upon the good ship , (master) for a voyage at and from
to her port or ports of discharge in the river , at
the rate of £ per cent. premium. AND this deponent fur-
ther saith, that in the due prosecution of her said voyage the said
ship was lost, by means whereof a total loss hath accrued
upon the said policy which the said (bankrupt) and the other under-
writers thereon on the day of last adjusted and settled
at £ per cent., by subscribing an indorsement made thereon
in the words and figures following, to wit: "London, May, 18 .
Adjusted a total loss of one hundred pounds per cent. payable in a
month £ ," making together the sum of £ , and for which
said sum of £ neither he this deponent, nor his said partner,
nor any other person or persons to their use and benefit, or by their
order, to the knowledge and belief of this deponent, have or hath re-
ceived any security or satisfaction whatsoever, save and except the
said two recited policies of assurance and indorsements so made there-
on as aforesaid.

SWORN, &c.

(Deponent).

Stamp.

** See post. Vol. III. "STAMP," Sched. "AFFIDAVIT."

DEPOSITION.

Execution
(submission).

No. CCCXXXI.

**Deposition of the due Execution of a Submission to Arbitration (1).*

KING'S BENCH (or other Court of which the submission is to be made a Rule).

(The Deponent) of, &c., gentleman, maketh oath and saith that he was present at the time of the execution of the bond or obligation [or other deed as the case was,] hereunto annexed and by (obligor) of, &c. therein mentioned, and did see him duly sign, seal and as his act and deed deliver the said bond or obligation with the condition thereunder written. AND that the name (obligor) set and subscribed thereto is of the proper hand-writing of the said (obligor). And that the name (deponent) set and subscribed as the witness thereto, is of the proper hand-writing of this deponent.

SWORN, &c.

(Witness).

(1) Before an award can be enforced by attachment under stat. 9 and 10 Rule of Court. Wm. 3. c. 15. the submission must be made a rule of one of the Courts at Westminster, for which purpose an affidavit of the due execution of the instrument of submission must be made by one of the witnesses.

*** See post. Vol. III. "STAMP," Sched. "AFFIDAVIT."

Stamp.

DEPOSITION.Execution
(conveyance).

No. CCCXXXII.

**Deposition of the Execution of Deeds of Lease and Release or other Conveyance.*

(*The Deponent*) of, &c. maketh oath and saith, that he was present at the execution of the indentures hereunto annexed, the one thereof bearing date on or about the day of , and the other thereof on or about the day next thereafter, the said last mentioned Indenture being made or expressed to be made between, &c. and did see the said (*party*) of, &c. therein mentioned, sign, seal, and as his act and deed deliver the same Indentures respectively, and that he this deponent subscribed his name upon the back of each of the said Indentures as a witness to such signing, sealing, and delivering thereof respectively.

SWORN, &c.

(*Deponent*).

Stamp.

*** See *post.* Vol. III. "STAMP," Sched. "AFFIDAVIT."

DEPOSITION.

Execution
(letter of attorney).

No. CCCXXXIII.

*A Deposition of the Execution of a Letter of Attorney (1).

(The Deponent) of, &c. maketh oath and saith, that he was present and did see the (*principal*) of, &c. duly sign and seal, and as his act and deed deliver the letter of attorney hereunto annexed, and that the name (*principal's name*) thereunto set, as the name of the party executing the same, is of the proper hand-writing of him the said (*principal*), and that the names (*one witness*) and (*deponent's name*) respectively, set or subscribed as witnesses to the due execution of the said letter of attorney, are of the proper hands writing of the said (*witness*) and of this deponent respectively.

SWORN, &c.

(Deponent).

(1) In order to make, &c.

Rule of Court.

** See post. Vol. III. "STAMP," Sched. "AFFIDAVIT."

Stamp.

DEPOSITION.Execution
(warrant of at-
torney).

No. CCCXXXIV.

**A Deposition of the Execution of a Warrant of Attorney (1) to
confess Judgment.*

Variations where it is a Cognovit (2).

(*The Deponent*), of, &c. maketh oath and saith that he was present at the execution of the warrant of attorney [*or cognovit*] (*a*) hereunto annexed by (*the cognizor*) therein named on the day of now last past, and did then see him the said (*cognizor*) duly sign, seal, and as his act and deed deliver the said warrant of attorney: AND that the name (*cognizor's name*) set and subscribed to the said warrant of attorney, [*or cognovit*] is of the proper hand-writing of him the said (*cognizor*). AND that the name (*witness*) set and subscribed as the witness to such execution as aforesaid is of the proper hand-writing of this deponent.

SWORN, &c.

(*Deponent*).

(1) An affidavit is required to be filed of the execution of warrants of attorney.

(2) A like affidavit is necessary of the execution of a cognovit.

Stamp.

* * See *post*. Vol. III. "STAMP," Sched. "AFFIDAVIT."

DEPUTATION.

Clerk of the
Peace.

No. CCCXXXV.

*A Deputation (1) of a Clerk of the Peace (2) by the Custos Rotulorum of the County.—(usual form).

To (intended clerk) of the town of _____ in the county of _____
gent. (3). WHEREAS, &c. [*recite the letters patent or act of Par-* Recital.

(1) See also "APPOINTMENT," *ante*, Vol. I. p. 235, *et seq.*

(2) The clerk of the peace is an officer belonging to the sessions of the peace, whose duty it is to draw processes, read indictments, enrol proceedings, and whose appointment belongs by statute to the custos rotulorum of the county, and it may by 37 Hen. 8. c. 1. be executed by deputy; but cannot be sold.

As to what offices may by the common law or the ancient statutes be performed by deputy, see 1 Elem. Con. 2nd Ed. 284. The law is now however altered as to certain offices attached to the courts of justice by 6 Geo. 4. c. 82. by which it is declared that the offices of chief clerk of the Court of King's Bench, clerk of the Treasury, and custos brevium and filaser, exigenter, and clerk of the outlawries, and the several offices in the gift of the said chief clerk shall not only not be saleable as heretofore, but be executed by the several officers in person, and not by deputy, unless (sec. 4.) by reason of ill-health or other infirmity, or other reasonable cause, to be allowed by the Chief Justice of the Court of King's Bench: in which case a deputy may be appointed by such Chief Justice, specifying in the appointment the cause thereof.

And by act of the same year, c. 83. the like is declared concerning the offices of the chief and third prothonotaries of the Court of Common Pleas, clerk of the king's silver, clerk of the jurata, clerk of the essoigns, clerk of the warrants, enrolments and estreats, exigenter, clerk of the supersedeas, filasers for all the counties in England, and clerk of the errors in the Exchequer Chamber.

And by both the above acts it is provided that every officer within those acts shall render to the Commissioners of the Treasury, within one month after each term, a true account of all fees taken by them, and pay the same into the Receipt of Exchequer.

And that where a deputy shall be appointed, and any portion of the fees is to be paid to his principal, the same shall be paid to him in the first instance, and no principal officer shall be accountable for monies received by such deputy.

(3) Deputations are usually by deed-poll, which is without objection when they are simply appointments and intended to remain in the hands Deed-poll.

DEPUTATION.
Clerk of the
Peace.

Appointment.

To hold during
 good behaviour.

liament authorising the nomination.] NOW BE IT KNOWN to you and to all others whom it doth or may concern, that I the said (*appointor*) being fully informed and satisfied of the learning and experience of the said (*clerk*) in the laws of this realm, and of his ability, prudence and integrity, and other fit qualifications for the execution of the office or clerkship of clerk of the peace of the said county of _____, in pursuance of the power and authority given to me the said (*appointor*) by the aforesaid acts of parliament, [*or letters patent,*] or otherwise howsoever, and to the intent that the said office or clerkship of clerk of the peace may be ably and duly executed by a person of knowledge, industry and integrity, residing in the same county, HAVE deputed, given and granted, and by these presents Do depute, give, and grant, unto the said (*clerk*) the office or clerkship of clerk of the peace of and for the same county of _____, and you the said (*clerk*) clerk of the peace of the said county of _____, I the said (*appointor*) do hereby make, ordain, nominate and appoint TO HAVE, HOLD, enjoy, and execute the said office or clerkship of clerk of the peace by you or your sufficient deputy, and to take and receive the fees, profits and perquisites thereof for so long time only as you the said (*clerk*) shall well demean yourself in the said office.

Given under my hand and seal this _____ day of _____

of the appointee as a testification of his authority; but when they contain covenants on the part of the appointee, and one part of the instrument is (as in such case it ought) to remain with the appointor, it should be by indenture.

Stamp.

* * * Common Deed Stamp.

DEPUTATION.Gaoler.

No. CCCXXXVI.

**A Deputation of a Gaoler by the Sheriff.*

THIS INDENTURE (1) made the day of in the
 year of the reign, &c. and in the year of our Lord 18 ,
 BETWEEN (*sheriff*) of, &c. of the one part, and (*gaoler*) of, &c. of
 the other part. WITNESSETH, that the said (*sheriff*) for divers good
 causes and considerations him thereunto moving, DOTH depute,
 constitute, and appoint the said (*gaoler*) to be his gaoler and keeper
 of all and singular the prisoners and persons now in custody within
 the gaol or castle of in the said county of ; as
 also gaoler and keeper of all and singular other person or persons
 who at any time hereafter, during the shrievalty of him the said
 (*sheriff*), and until he shall assign and set over the said gaol, priso-
 ners, and persons, to the next succeeding high sheriff, shall be com-
 mitted to the said gaol or castle of by the sheriff for the
 time being or any justice of the peace or other person or persons
 having lawful authority in that behalf. AND the said (*sheriff*)
 DOTH by these presents grant unto the said (*gaoler*) all such lawful
 profits, fees, and perquisites as are and shall be due unto him as
 gaoler or keeper of the said gaol or castle from the prisoners thereof
 during the time or period aforesaid. AND the said (*gaoler*) DOTH
 for himself, his heirs, executors, administrators, and assigns, and
 every of them, covenant, promise, and grant to and with the said
 (*sheriff*), his executors, and administrators, by these presents, that
 he the said (*gaoler*) or his sufficient deputies or assigns shall and
 will from henceforth stand and be charged with all and every the
 prisoner and prisoners in the said castle, and also receive and take
 into his custody and safe keeping in the said castle all and every the
 prisoner and prisoners which shall be from time to time hereafter

WITNESS.
 Sheriff deposes,
 &c.

Covenant by
 gaoler to per-
 form his duty.

(1) See *ante*, p. 449, notes.

DEPUTATION.Gaoler.

And find execu-
tioner, &c.

Will keep a ca-
lendar of prison-
ers.

Further security.

committed or sent unto the said castle by the said sheriff, his under-sheriff, bailiff or bailiffs, deputy or deputies, justice or justices of the peace, justice or justices of the assize, nisi prius, gaol delivery, oyer and terminer, commissioner or commissioners of sewers, or other magistrate or officer having a lawful power or authority so to do, and the same prisoner or prisoners so committed as aforesaid, and all other prisoner or prisoners now being or remaining in the castle of aforesaid, shall well and truly, by himself, deputy or deputies, keep safe and imprisoned according to the tenor, purport, and effect of all such warrants, precepts, or commandments by virtue of which they or any of them shall be or stand committed or imprisoned until such prisoner or prisoners shall be lawfully delivered and set free and at liberty with the allowance of the said sheriff or his under-sheriff. AND that the said (*gaoler*), his deputy or deputies, shall not suffer any prisoner or prisoners whomsoever to be delivered out of the said castle or gaol without a liberate or some other sufficient warrant from the said sheriff or his under-sheriff, or his or their deputy or deputies, under the seal of the office first had and obtained, and such fees as of right are and shall be due and belonging to the said sheriff to be satisfied and paid. AND also that the said (*gaoler*), his sufficient deputy or deputies shall and will at all and every assize and gaol delivery to be holden at the castle of or elsewhere in the said county of , and at all and every of the sessions of the peace within the said county, during the time the said sheriff shall continue in his said office, at his the said (*gaoler's*) proper costs and charges find and provide a top-hangman or slaughterman for the executing, burning, hanging, or quartering, and other the execution or correction of criminals, and also irons, bolts, locks, manacles, and ropes, as often as occasion shall be. AND shall and will upon demand deliver unto the said sheriff, under-sheriff, and deputy, the said castle or gaol, as also a true and perfect calendar containing all the prisoners' names within the said castle, and mentioning all the several causes of their and every of their imprisonment. AND shall from time to time well and sufficiently save, defend, keep harmless and indemnified the said (*sheriff*), his heirs, executors, and administrators, of and from all manner of actions, suits, troubles, executions, fines, penalties, extents, damages, and incumbrances whatsoever, for or by reason or colour of any escape or setting at liberty any person or persons which shall or may be committed to the custody of the said (*gaoler*), his or any of his deputy or deputies, or any other act or neglect of him the said (*gaoler*), his deputy or deputies, servants or assigns, in any way or manner howsoever. AND that he the said

(*gaoler*), his executors, administrators, and assigns, shall upon six days' notice as warning, left with the porter or keeper of the gates of the said castle, give better and further security for the safe keeping of the prisoners committed to the said gaol, and to perform all covenants, promises, and agreements in these presents contained which on his and their parts are to be observed and performed. IN WITNESS, &c.

DEPUTATION.

Gaoler.

* * * An appointment of the above nature is sometimes accompanied Bond.
by a bond of indemnity; for the general form of which see *ante*, tit.
"BOND," "ACCOUNT," and "INDEMNITY."

* * * Common Deed Stamp.

Stamp.

DEPUTATION.Steward
(estates).

No. CCCXXXVII.

**A Deputation of a Land Steward for general Superintendence and Receiving Rents of an Estate (1).*

Recitals.

WITNESS.
Appointor ap-
points steward.

THIS INDENTURE (2) made the day of in the year of the reign, &c. and in the year of our Lord 18 ,
BETWEEN (appointor) of, &c. of the one part, and (steward) of, &c. of the other part: WHEREAS the said (appointor) is seised to him and his heirs of and in several manors, messuages, farms, lands and hereditaments, situated and being at and other parts of the county of . AND WHEREAS in confidence of the integrity and other due qualifications of the said (steward), the said (appointor) has agreed to appoint him his steward and agent to superintend his said estates, to receive the rents and profits thereof, at the salary or yearly sum of £ , for his care and trouble therein. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the ends and purposes aforesaid, he the said (appointor) HATH deputed, constituted and appointed, and by these presents DOTH depute, constitute and appoint, and in his place and stead put the said (steward) to be the true and lawful agent and attorney of and for him the said (appointor), for and during such time or period as he the said (appointor) shall think fit, and in his name and for his proper use and benefit to receive of and from all and every the bailiffs, tenants and occupiers of the manors, messuages, farms, lands and hereditaments of the said (appointor) in the said county of , and of every of them respectively, all and every the rent and rents, sum and sums of money whatsoever which now is or are or at any time during his said stewardship or agency, shall or may be due to him the said (appointor) from the bailiffs, tenants and occu-

(1) See also "APPOINTMENTS," ante, Vol. I. p. 265.

(2) See ante, p. 440, n. (3).

piers aforesaid or any or either of them in anywise howsoever, and thereout to make all just and usual allowance for repairs, land-tax and otherwise as may be just and right. AND in default of payment of all or any part of the said rents or profits, to enter upon the premises out of or for which the same shall be payable or any part thereof, and make distress or distresses for the same, and deal and dispose thereon and therewith according to law in all things relating thereunto; and also to enter or re-enter for me and on my behalf into and upon the said hereditaments or any part thereof for breach of covenant, condition or other lawful cause in that behalf. Also to sell or make any contract or contracts for the sale of, and to fell, lop and top at proper seasons and at proper age, size and growth the timber or other trees now or for the time being growing upon the said hereditaments. AND likewise to demise or let or agree for the letting or demising any of the said messuages, farms, lands and hereditaments when untenanted, for any term or terms of years not exceeding years, at the best or other sufficient yearly rent which can be obtained for the same without fine or premium. AND the said (*appointor*) doth hereby declare that the receipt of the said (*steward*) shall be a good discharge for all rents, dues, profits and other monies which shall be to him paid in virtue or pursuance of these presents. AND the said (*appointor*) doth hereby more- over authorize and empower him the said (*steward*) generally to do or cause to be done at his discretion (unless otherwise by him ordered) all and every lawful other acts and things whatsoever in or about the premises as the steward or agent of the said (*appointor*), which shall be requisite, expedient or proper to be done in relation to the same, as fully and effectually to all intents and purposes whatsoever as he the said (*appointor*) could or might do or have done in his own proper person if these presents had not been made: AND the said (*appointor*) for himself, his heirs, executors and administrators, doth hereby covenant promise and agree with the said (*steward*) his executors, administrators and assigns, in the manner following, (that is to say), That it shall be lawful for the said (*steward*) in the first place, out of the monies which shall come to his hands by any of the means aforesaid, to deduct and retain all such costs, charges and expenses which he shall or may from time to time reasonably expend, disburse or pay, in or concerning the matters and things aforesaid. AND FURTHER that he the said (*appointor*) shall and will allow and pay, or cause to be paid unto the said (*steward*) the salary or yearly sum of £ for his time, care and trouble in executing the said office of stewardship or agent, by even half yearly payments, on

DEPUTATION.

Steward
(estates).

Power of distress.

Fell timber.

Let premises.

Give receipts.

To act generally.

Covenant by appointor.

Steward may retain expenses.

Will pay him his salary.

DEPUTATION.Steward
(estates).Covenant by
steward for
fidelity.

the day of , and the day of in each year, clear of all abatements and deductions whatsoever, and pay or cause to be paid a just proportion of the said sum on the day of now next ensuing, after the computation of £ per month from the date hereof. AND also that it shall be lawful for him the said (*steward*) to deduct and retain such allowance or salary when and as the same from time to time shall so become payable, by and out of the rents and profits of the said estates. AND the said (*steward*) doth hereby for himself, his executors and administrators, covenant, promise and agree to and with the said (*appointor*), his heirs, executors, administrators and assigns, in the manner following, (that is to say) that he the said (*steward*) shall and will lawfully, faithfully and honestly execute and perform to the best of his ability and judgment the powers and authorities hereby reposed in him in all things, and in particular shall and will from time to time at the end of every calendar months, or within the space of days there- after during the continuance of his said stewardship or office, and also immediately upon the determination thereof, give and deliver unto the said (*appointor*), his heirs, executors, administrators, or assigns, or such other person as he or they shall direct, a true, perfect and just account in writing of all and every the rents and sums of money which by him shall then have been received upon account of or in respect of the said estates and premises by virtue of the power hereby given, and also of all rents and sums of money which shall be then in arrear and unpaid, and shall and will from time to time and at all times forthwith well and truly pay or cause to be paid over unto the said (*appointor*), his heirs, executors, administrators or assigns, or as he or they shall direct, all and every the monies which shall have been so received after making such deductions thereout as he the said (*steward*) is hereinbefore authorized in that behalf, and that according to the true intent and meaning of these presents. IN WITNESS, &c.

Stamp.

* * * Common Deed Stamp.

DISCLAIMER.

Right, &c.

No. CCCXXXVIII.

**A Disclaimer of Title by a Trustee under a Conveyance or Will (1).*

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the trustee*) of, &c. SENDETH GREETING (2). WHEREAS by an indenture or will, [*as the case may be*] bearing date on or about the day of , &c. [*recite the deed or will by which the premises were conveyed or devised to the trustee.*] AND WHEREAS the said (*trustee*) hath not in any wise acted in or taken upon himself the execution of the said trust, and hath determined not so to do, nor to receive, derive or be chargeable with or accountable for any legal, equitable or other estate or interest whatsoever by or under the

Recitals.

Disclaimer.

(1) A disclaimer or renunciation of title must, in order to its efficiency be made before any act has been done which can by legal presumption be deemed an acceptance of the trust: hence these species of instruments are usually accompanied by a release in order that it may pass any interest which may have vested in the trustee by any inadvertent act which might be construed into an acceptance of the trusts, but this seems to be improper, as implying the admission of an interest vested in him (see *Observ. Loughb. Ch., Crewe v. Dickens*, 4 Ves. Jun. 97); which notwithstanding a subsequent disclaimer might render his concurrence necessary in a discharge for purchase-money on a sale of the trust estate.

Formerly where the estate was freehold the disclaimer must (upon feudal reasons and for the sake of notoriety) have been in a court of record; but this is no longer necessary; see *Townson v. Tickell*, 3 Barn. & Ald. 31. And it has even been doubted by a high authority, whether any writing, although not by deed, will not be sufficiently operative. Vid. *Observ. of Holroyd, Justice*, in the case last cited. And as nothing passes to a grantee without his consent, it should seem that any specific mode of testifying his dissent would be enough.

A disclaimer is also sometimes used where a conveyance is made to one person in trust for another, and such trust is not expressed in the deed, for which see *post.* Vol. III. "TRUST."

(2) It is immaterial whether a deed poll be in the third person as here, or in the first as *post.* next precedent.

DISCLAIMER.Right, &c.WITNESS.
Trustee dis-
claims, &c.

And releases.

said indenture [*or will*]. Now KNOW YE, that he the said (*trustee*) HATH disclaimed and renounced and by these presents DOTH wholly and utterly disclaim and renounce all estate, right, title, interest, claim and demand whatsoever, both legal and equitable, in or to the messuages, lands and hereditaments in or by the hereinbefore in part recited indenture [*or will*] expressed or intended to be conveyed or assured [*or devised*] to him the said (*trustee*) or otherwise howsoever, and all trusts, powers, authorities and directions therein or thereby given or contained concerning or relating to the same or to any part thereof. AND KNOW YE also, that for and by way of further assurance, but not by way of acknowledgment or admission of the estate, right, title or interest hereinbefore disclaimed, or any other estate, right, title or interest whatsoever, in, to or concerning the said hereditaments or any part thereof, he the said (*trustee*) DOTH hereby release (1) and quit claim unto the said (*other trustee, if any, or heir at law, as the case may require*) ALL and every the said hereditaments and every part thereof, and all and every estate, right, title and interest, claim and demand, in, to or concerning the same. IN WITNESS, &c.

Release.

(1) See notes *ante*, p. 457.

Stamp.

. Common Deed Stamp.

DISCLAIMER.

Suit.

No. CCCXXXIX.

**A Deed of Disclaimer of Interest in a Suit by one or more (1).*

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*name*) of [*or we whose hands and seals are hereunto set and affixed*] SEND GREETING. WHEREAS (*suitor*) by and in the name of himself [*or of themselves*], and also of me [*or us*] whose hand and seal is [*or hands and seals are*] hereunto set, did in or about or as of term now last past, exhibit, *or* institute an action [*or a suit*] in his Majesty's, &c. (*the court*) against, &c. for the purposes in the bill filed in the said court [*or in the declaration filed in the said action*] expressed. Now KNOW YE, that I the said (*disclaimer*) do for myself [*or we the said persons whose hands and seals are hereunto set do jointly and every of us doth for himself separately and respectively*] by these presents renounce, disown, and disclaim the said suit [*or action*] and all proceedings had or to be had thereupon, and all right, title, equity, benefit, relief and redress thereby claimed or sought for, and do hereby declare that the said action [*or suit*] was commenced and has been prosecuted without my consent [*or without the consent of us or any of us*] and I do [*or we do for ourselves jointly and for every of us severally and respectively*] remise, release, and acquit the said defendant, his executors, and administrators, and every of them, of and from the said action [*or suit*] and all right, title, redress, equity, relief, benefit, claim, and advantage thereby made or sought for, and of and from all matters and things therein complained of; so that and in such manner as that I the said (*disclaimer*), my heirs, executors, and administrators, [*or we and every of us and every of our heirs, executors, and administrators,*] shall be for ever hereafter debarred and ex-

Recitals.

WITNESS.
Disclaimer of
interest in sub-
ject of suit.

Release.

(1) See *ante*, p. 457. n. (1) and (2). and p. 418, notes.

DISCLAIMER.Suit.

cluded by these presents of and from prosecuting the said action [or suit] or him the said (*defendant*), his executors or administrators, for or in respect of any matter, cause, or thing whatsoever relating thereto or to the subject matter thereof in anywise howsoever.
IN WITNESS, &c.

ENFRANCHISE-
MENT.Copyholds.

WITNESS.
That in con-
sideration of the
sum of £

The lord parts
and releases.

the same manor of _____, and the said (*copyholder*) is seised (1) to him and his heirs at the will of the lord, according to the custom of the same manor, of the messuage and hereditaments hereinafter particularly described part and parcel of the said manor. AND WHEREAS the said (*lord*) hath agreed with the said (*copyholder*) for the enfranchisement of the said messuage and hereditaments for the sum of £ _____. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ _____ of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*lord*) in hand well and truly paid by the said (*copyholder*) at or before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the enfranchisement of the messuage or dwelling-house and hereditaments hereinafter described, the said (*lord*) doth hereby acknowledge [and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge the said (*copyholder*), his heirs, executors, and administrators, as well by these presents as by the receipt or acknowledgment for the same sum hereupon indorsed]; HE the said (*lord*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant (2), bargain, sell, alien, release, and confirm unto the said

But copyholder
may possess a
particular estate
only.

And the enfran-
chisement will
be for the benefit
of those in re-
mainder, who
must pay a
proportion of the
consideration.

Admittance.

No particular
operative words
essential.

(1) Although we have seen it to be necessary in order to an enfranchisement, that the lord should possess an estate in fee simple, yet it is not so in the case of the copyholder, who may possess any particular or partial interest, as for life, &c. and yet be enabled to effect an absolute enfranchisement, because "though the extinguishment of the copyhold interest, as to him, can be for no longer time than that which he has, yet the grant of the freehold in fee simple by the lord renders the land for ever incapable of being again holden of him by copy; such conveyance therefore operating as a perpetual suspension of the copyhold interest, must necessarily effect an enfranchisement." See 3 Elem. Conv. 154. But the enfranchisement in this case will be for the benefit of those in remainder, who would have taken the copyhold interest had the enfranchisement not taken place, as well as of himself, and not pass a fee simple to the particular tenant, and a court of equity will direct a conveyance from his heir at law to him in remainder, on his paying a proportionate part of the consideration, if any, advanced for the enfranchisement; see Lane's Ca. 2 Co. 16; Wynne v. Cooke, 1 Brow. Ch. Ca. 515; Challoner v. Murhall, 2 Ves. Jun. 524.

The heir of a copyhold may accept an enfranchisement before admittance; Wilson v. Alter, 1 Jac. and Walk. 611.

(2) No particular words are appropriated to this species of assurance, but such must be used as will convey the freehold or of free estate in the premises, as "the transfer of the freehold is of the very essence of enfranchisement;" see 1 Watk. Cop. 365.

ENFRANCHISE-
MENT.Copyholds.

(*copyholder*) (1) and his heirs, ALL, &c. (2) or howsoever otherwise the said messuage or tenement and hereditaments, or any of them now are, or is, or heretofore were, or was situated, tenanted, called, known, described, or distinguished; together with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses,] timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, feeding and foldage of every kind, and all and all manner of other commonable (3) and other rights, privileges, easements, advantages, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed (4); and the reversion and reversions, remainder and remainders, rents, issues, profits and pro-

(1) It is necessary in order to an enfranchisement that the conveyance should be made to the tenant himself, for if the freehold be conveyed to a stranger, even though in trust for the copyholder, it will be no enfranchisement, nor even an extinguishment; *Howard v. Bartlett*, Hob. 181; *Waldoe v. Bartlett*, Cro. Jac. 573. 2 Roll. Ab. 178; as the act of the lord alone shall not prejudice the copyholder's estate; 4 Co. 24. b. *Waldoe v. Bartlett*, Cro. Jac. 573; but as by the conveyance of the freehold the premises are severed from the manor, the copyhold tenure will on the conveyance over of the freehold by the grantee to the tenant, become extinct, for its existence would be incompatible with the freehold; and as both tenures cannot subsist together, the consequence is, the less worthy would merge in the other, and the base be absorbed in the free. See *Lane's Ca.* 2 Co. 16. b; 1 *Watk. Cop.* 364.

Conveyance must be made to the tenant himself and not to another.

(2) An accurate and particular description of the premises intended to be enfranchised must be inserted here, by their ancient and present names, situation, boundary, &c. as the conveyance must be of the "freehold of the particular and specific premises which were holden by copy."

Parcels.

(3) Care must be taken that these words be inserted, unless the appurtenances be expressly granted *nominatim*. See *post.* p. 465. n. (1).

Commons.

(4) As all that is requisite to give effect to a release by way of conveyance is that there should be a possession or vested interest in the releasees, and a reversion in the releasor, together with a privity between them in respect of those interests; all of which is the case as between the lord and his copyhold tenant; the bargain and sale for a year is here omitted as being unnecessary. And see *Lit. s.* 460; *Co. Lit.* 270. b; *Sammes' Case*, 13 Co. 55; *Doe dem. Reay v. Huntingdon*, 4 *East*, 271.

Bargain and sale for a year.

ENFRANCHISE-
MENT.Copyholds.

To hold to the
tenant in fee
simple.

Enfranchised
from all copy-
hold tenure, &c.

Proviso that
these presents
shall not ex-
tend to the
enfranchisement
of other copy-
holds.

ceeds of and in the said hereditaments and premises, and every of them respectively; and all the seignior, estate, right, title, interest, use, trust, property, possession, possibility, freehold, inheritance, claim and demand whatsoever, both at law and in equity, of or belonging or due by custom or otherwise to him the said (*lord*), in, to, out of, upon, or in respect of the said hereditaments and premises or any of them; To HAVE AND TO HOLD the said messuage or tenement, hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or mentioned, or intended so to be, and every of them and every part thereof, with their appurtenances, unto the said (*copyholder*) and his heirs, to the only proper use and behoof of him the said (*copyholder*), his heirs and assigns, for ever. To the end, intent, and purpose, and so and in such manner, that he the said (*copyholder*), his heirs and assigns, shall and may henceforth and for ever hereafter hold and enjoy the same premises absolutely freed, exonerated, discharged, and enfranchised, of and from all copyhold or customary tenure, and all and all manner of yearly and other rents, quit rents, chief rents, fines, heriots, fealty, suit of court, suits, customs, payments, duties and services whatsoever, [which by or according to the custom of the said manor of _____, the said messuage or tenement and hereditaments, or any of them or any part thereof, is, are, or hath or have been, or ought otherwise to have been subject or liable to, or charged with, or which otherwise are, or is, or have, or hath been paid, or payable, or rendered, or performed, for or in respect of the same, or any of them, or any part thereof, as part or parcel, or holden of the said manor, or otherwise howsoever.] (1) [PROVIDED ALWAYS, and it is the true intent and meaning of these presents, and of the parties hereto, and it is hereby declared and agreed that these presents or any clause, matter, or thing herein contained shall not extend nor be deemed, taken, or construed to extend to enfranchise

Fine.

(1) If it be necessary that a fine should be levied, add here a covenant for that purpose, for the form of which, see *ante*, p. 366, and declare the uses as follow:

Declaration of
uses of fine.

“AND it is hereby declared and agreed, by and between the said parties to these presents, to be their and each of their true intent and meaning, that the said fine or fines so as aforesaid, or in any other manner, or at any other time to be had, levied and executed, of the said messuage or tenement and premises, hereinbefore de-

or make free the remaining or any other parts of the several copyhold messuages, lands, tenements, or hereditaments (if any), now in the tenure, possession, or occupation of him the said (*copyholder*), within or holden of the said manor of _____, or to acquit or discharge the same from any payments, rents, quit rents, fines, heriots, fealty, suit of court, or any other payments, duties, customs or services, which by or according to the custom of the said manor, the said respective copyhold messuages, lands, tenements, or hereditaments, or any of them, have at any time heretofore been subject or liable to, or charged with, or which have been, or ought to have been paid, rendered, or performed, for or in respect of the said respective messuages, lands, tenements, or hereditaments, as parcel of the said manor.] AND THIS INDENTURE FURTHER WITNESSETH (1), that for the considerations aforesaid he the said (*lord*) HATH granted and confirmed, and by these presents BOTH grant and confirm unto him the said (*copyholder*) and his heirs, all such commonage and right and title of or to common of what nature or kind soever, of, in, upon,

ENFRANCHISE-
MENT.

Copyholds.

FURTHER
WITNESS.
Grant of com-
mons.

scribed, or any part thereof, shall be and enure, and shall be adjudged, construed, deemed and taken to be and enure, in the first place, for enfranchising the said messuage or tenements, hereditaments and premises, of and from the said copyhold tenure, in the manner aforesaid, and according to the true intent and meaning of these presents; AND in the next place, for conveying, assuring and confirming the said messuage or tenement and premises, so freed and discharged as aforesaid, unto and to the use and behoof of the said (*copyholder*), his heirs and assigns, for ever."

(1) As all prescriptive rights and privileges incident to copyholds, as rights of common, &c. out of the wastes of the manor, are at law annihilated by the destruction of the copyhold tenure, these things should upon an enfranchisement, be expressly granted by the lord; see *Port v. Ward*, Moore 667; particularly where they are of such a nature as to be collateral only to the land, and not strictly comprised under the word "appurtenances;" see *Marsham and Hunter*, Cro. Jac. 253; 2 Brownl. 209, s. c.; *Lee v. Edwards*, 1 Brownl. 173; *Massam v. Hunt*, ib. 220; *Yelv.* 189, s. c.; *Crowther v. Oldfield*, 2 Lord Raym. 1225; *Salk.* 170, s. c.; but although the enfranchisement of a copyhold extinguishes rights of common and other appurtenances to the copyhold, subsisting *within* the same manor; yet it will not be an extinguishment of rights to which the copyholder is entitled out of *another* manor, of which the same lord is proprietor, such rights not being annexed to the customary estate, but to the land only; see *Barwick v. Matthews*, 5 Taunt. 365; and although they are annihilated at law, yet they will be upheld in equity; *Styant v. Staker*, 2 Vern. 250.

Prescriptive
rights should
upon an enfran-
chisement be ex-
pressly granted.

**ENFRANCHISE-
MENT.**Copyholds.

Covenant by the
lord that he is
seised in fee.

And hath right
to enfranchise.

or out of all and every the wastes, commons, and commonable lands whatsoever and wheresoever, of or belonging to him the said (*lord*) as lord of the said manor of _____, in as full and beneficial a manner, to all intents and purposes, as he the said (*copyholder*) hath been used and accustomed to have or enjoy, or might or could have exercised, claimed, or demanded, or in anywise have been entitled to the same as a copyhold tenant, owner, or occupier of the said messuage or tenement, and hereditaments, if these presents had not been made. AND the said (*lord*) for himself, his heirs, executors, and administrators, and for every of them, doth hereby covenant (1), declare, grant, and agree with and to the said (*copyholder*), his heirs and assigns, and with and to each of them, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, occasioned, suffered, or omitted by him the said (*lord*) or any of his ancestors, or any of his or their trustees or trustee, to the contrary, he the said (*lord*) at the time of the sealing and delivery of these presents is lawfully, rightly, and absolutely seised in his own right and to his own use, of a good, perfect, absolute, and indefeasible estate of inheritance in fee-simple of and in the manor of _____ aforesaid, without any manner of trust, condition, qualification, restriction, matter, or thing whatsoever expressed or implied, which can or may determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever. AND also that (for and notwithstanding any such act, deed, matter, or thing as aforesaid) he the said (*lord*) is the lawful, rightful, and only lord of the same manor, and hath in himself full power and lawful and absolute right, title, and authority to enfranchise the said messuage or tenement, lands, hereditaments, and all and singular other the premises hereinbefore described, and enfranchised, or mentioned or intended so to be, and to grant, bargain, sell, release, and confirm, the freehold possession, reversion, and inheritance thereof, unto and to and for the use and behoof of the said (*copyholder*), his

Brevity.

If however the words "common, &c." be included as they usually are, amongst the general words added to the description of the premises, and the deed is required to be made as concise as possible, the express grant of them may be omitted, as they would pass or be restored by the word "grant," used in the operative part of the conveyance.

Covenants for
the title.

(1) As to the necessity of having covenants for the title, see *ante*, Vol. I. p. 506, n. (1).

heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND FURTHER that he the said (*copyholder*), his heirs and assigns, shall or lawfully may (1) have, hold, retain, and enjoy, all and singular the messuage or tenement, lands, hereditaments, and premises hereby granted, released, and enfranchised, or mentioned or intended so to be, with their and every of their respective rights, privileges, and appurtenances, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever by or from the said (*lord*) or his heirs, or any person or persons now or hereafter lawfully, equitably, or rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, or the manor whereof the same are holden, from, through, under, or in trust for him, them, or any of them, or any of the ancestors of him the said (*lord*). AND that free and clear and clearly and absolutely discharged and exonerated of, from, and against all [former and other gifts, grants, settlements, mortgages, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right, and title of or to dower or freebench, remainders, reversioners in the crown or elsewhere, judgments (2), decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciements, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or suffered by or with the procurement, or privity of the said (*lord*) or any of his ancestors, or any other person or persons now or hereafter rightfully claiming or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any of

ENFRANCHISEMENT.

Copyholds.

That the copyholder shall quietly enjoy.

Free from incumbrance.

(1) The copyholder being already in legal possession of the land, the usual words "enter into and upon, &c." are here omitted.

(2) Although judgments, &c. are no lien on copyhold lands, yet as incumbrances made by the lord, and the freebench of his wife, would be a charge upon the lord's profitable rights arising from mines, &c. it is proper that the tenant should be indemnified against them in this as well as in other cases. And see *post*. p. 469. note.

Enfranchisee should be indemnified against judgments, &c.

ENFRANCHISE-
MENT.Copyholds.

And from all
services to the
manor,

Covenant for
further assur-
ance.

them; and also of, from and against all and all manner of yearly and other payments, rents, quit rents, chief rents, customary or copyhold rents, fines, heriots, fealty, suit of court and other customary or copyhold duties, services or customs whatsoever, which by or according to the customs of the manner aforesaid, the said messuage or tenement and premises, or any of them, have or hath been subject or liable to or charged with, or which he the said (*copyholder*), his heirs or assigns, would or might have been required to have paid, done or performed, for or in respect of the same premises, or any part thereof as copyhold holden of or parcel of the said manor, if these presents had not been made. AND MOREOVER that he the said (*lord*) and his heirs, and all and every other person or persons, now or at any time hereafter rightfully claiming, or having title to claim any estate, right, title, charge or interest, at law or in equity, in, to, out of, upon or respecting the messuage or tenement hereditaments and premises hereby granted, released and enfranchised or mentioned or intended so to be, or any part thereof, from, through, under or in trust for him, them, or any or either of them, or any of the ancestors of the said (*lord*), shall and will from time to time, and at all times hereafter, within the space of years from the date hereof, upon every reasonable request, and at the costs and expense of the said (*copyholder*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected,] with all convenient and proper dispatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, matters and things whatsoever, [whether by fine or fines (1), with or without proclamations, common recovery or recoveries, deed or deeds, enrolled or otherwise, feoffment, release, confirmation, declaration or limitation of or to any use or uses, or other assurance or assurances, of record or not of record,] for the further, better, more perfectly, fully, and absolutely, or satisfactorily enfranchising the messuage or tenement, hereditaments and premises, hereinbefore enfranchised or mentioned or intended so to be, and for the granting, releasing, conveying, confirming the freehold possession, reversion, and inheritance of the same, with their and every of their respective rights, privileges, members, appendages and appurtenances, unto,

Fine included
in covenant for
further assur-
ance.

(1) A covenant to do all lawful and reasonable acts for further assurance, includes the levying a fine, although not named, and also the satisfying judgments; *King v. Jones*, 5 Taunt. 418.

and to, and for the use and behoof and benefit of the said (*copyholder*), his heirs and assigns, so freed, exonerated, released and discharged as aforesaid, in such manner and form as he the said (*copyholder*), his heirs or assigns, or his or their counsel in the law, (being of the degree of a barrister), shall advise and require, and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant than against or on the part of the person or persons who shall be required to make or execute the same, his, her or their devisors, ancestors, heirs, executors and administrators, and his, her or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her or their then place or respective places of abode for the making or executing the same without a reasonable and sufficient sum being previously paid, tendered or secured to him, her or them for or in respect of his, her or their time, trouble and expenses. IN WITNESS, &c.

ENFRANCHISE-
MENT.

Copyholds.

* * In an enfranchisement of copyholds, the precaution is sometimes taken of creating a term of years out of the copyhold estate, with the concurrence of the lord, and vesting it in a trustee to attach upon the *Freehold* inheritance after enfranchisement; the use of which is to protect such inheritance from any incumbrances there may be upon the manor, which upon the interest of the lord becoming united with that of the copyholder would according to some opinions attach upon it, on the principle that the enfranchisement is effected by a merger of the copyholder's estate at will, in the freehold of the lord conveyed by him to the copyholder for the purpose of enfranchisement; and as the utmost precaution against possible charges is necessary, the creation of such a term is generally recommended; see 3 Prest. Prac. Conv. 541. The form of a demise for this purpose, will, with the exception of verbal alterations, be similar to that given *ante*.

The enfranchisement of copyholds being a purchase of the freehold will, it is conceived, require an *ad valorem* stamp, on the amount of the consideration paid to the lord. And see *post*. Vol. III. "STAMP."

Term should be created previously to enfranchisement, as a protection against incumbrances on the freehold.

Stamp.

EXCHANGE.Freeholds, &c.
(common law).

No. CCCXLI.

*A Deed of Exchange of Freehold Premises (1).
Variations where Copyholds and where Leaseholds.*

THIS INDENTURE (2) of two parts made the day of
in the year of our Lord 18 , BETWEEN (3), A. B. of, &c. of

Exchange is the
mutual grant of
equal interests.

(1) An exchange is the mutual grant of equal interests, the one in consideration of the other, as where one man is seised or possessed of land in fee-simple, fee-tail, for life or for years, or is possessed of goods, and another man is seised or possessed of other lands or possessed of other goods in the like manner, and they exchange their lands or goods, the one for the other; see *Clermont v. Tasburgh*, 1 Jac. & Walker, 112. *Cadman v. Horner*, 18 Ves. 10.

Must be in
writing, and by
deed indented.

(2) An exchange might formerly have been either by parol, or by deed in writing, Lit. s. 62, unless the lands intended to be exchanged were situated in different counties, or the thing lied in grant, in which case it was and is still requisite that it should be by indenture, Lit. s. 63; Co. Lit. 50, 51; 9 Rep. 15; Perk. 244; and since the statute of 29 Car. II. c. 3., writing is in all cases necessary if the exchange be of freeholds, or of a term for more than three years, Co. Lit. 50. n. 326.

Parties to an
exchange.

(3) As to who may be parties to an exchange or are capable of exchanging with each other, see *ante*, Vol. I. p. 134. n. (1). In addition to which it may be observed, that joint-tenants, tenants in common, or co-parceners, cannot exchange with each other before partition, their possession being until then undivided; *M'Queen v. Farquhar*, 11 Ves. 476.

Corporate body.

And by 43 Geo. I. c. 107. bodies corporate, sole or aggregate may by deed enrolled (as required by 27 Hen. VIII. c. 6.) give or grant by way of exchange or benefaction any small plot of land, not exceeding one acre (although held in mortmain), lying convenient to be annexed to a church, chapel or house of residence for the incumbent, for the use of such church, chapel or incumbent, and see 17 Geo. III. c. 53. and amending acts, *post*. p. 486. n. (1).

the one part, and C. D. of, &c. of the other part. WHEREAS (1) the said A. B. is seised in his demesne as of fee of the lands and hereditaments, firstly hereinafter described; and the said C. D. is in like manner seised of the lands and hereditaments, secondly hereinafter described. AND WHEREAS the said A. B. and C. D. have mutually agreed to exchange their said respective lands and hereditaments for the lands and hereditaments of each other. Now THEREFORE THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, by and on the part of and with respect to the lands and hereditaments of the said A. B. (2), HE the said A. B. HATH given and granted, and by these presents DOth give and grant unto the said C. D., his heirs and assigns,

EXCHANGE.Freeholds, &c.
(common law).Recitals.WITNESS.That A. B.
grants.

(1) If the proposed exchange be of allotments, made under an act of inclosure, say,

Allotments under
an inclosure
act.

"WHEREAS, under or by virtue of an Act of Parliament, passed in the year of the reign of his present Majesty, entitled, "An Act for dividing and allotting the Common and Waste Lands of , in the county of ," a certain common field, piece or parcel of ground, situated, &c., was allotted by the commissioners in the said act named, unto the said A. B., and a certain other piece or parcel of ground, situated, &c., was allotted unto the said C. D. AND WHEREAS the said A. B. and C. D. have agreed to exchange their said allotments with each other, and the said C. D. hath agreed to pay the said A. B. the sum of £ , for equality of exchange. Now, &c." *as above.*

(2) If any sum be given for equality of exchange, add,

Sum given for
equality of ex-
change.

"And in consideration of the sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency to the said A. B. in hand well and truly paid by the said C. D., at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same is by way of and in full for equality of exchange, for or in respect of the lands and hereditaments conveyed unto the said C. D. as hereinafter is expressed, he, the said A. B., doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release and exonerate the said C. D. his executors, administrators and assigns, as well by these presents as by the receipt or acknowledgment for the same sum hereupon indorsed."

EXCHANGE.*Freeholds, &c.
(common law).*To hold to C. D.
in exchange.

ALL (1) &c. (*the lands of A. B.*), TO HAVE AND TO HOLD the said lands and hereditaments, with their and every of their rights, members, privileges, appendages and appurtenances unto and to and for the use and behoof of the said C. D., his heirs and assigns, for ever (2). For and in exchange (3) for ALL, &c. (*the lands of C. D.*) (4) and which said messuages, lands, tenements, and hereditaments have been or are intended to be given and granted by him the said C. D. unto and to the use of the said A. B. and his heirs, by indenture bearing, or intended to bear, even date with these presents (5), in exchange for the said several messuages, lands, hereditaments firstly hereinbefore described, and given and granted to him the said C. D. and his heirs as aforesaid. AND the said A. B. for himself and his heirs, by these presents doth, and at all times

Property capable
of being ex-
changed.

(1) As to what species of property is capable of being exchanged with another, and what interest the parties must respectively have in order to validate the exchange, see *ante*, Vol. I. p. 34. n. (1).

Copyholds.

If the lands be copyhold an ordinary deed of exchange at the common law will not be effective; each party must surrender his lands to the use of the other.

Estate must be
expressly limited
in an exchange.

(2) It is necessary that the estate intended to be limited to the parties should be expressly mentioned, as if no estate be limited to either party, it will, contrary to the case of an enfranchisement, be considered as an exchange for life only; but even if an estate for life be expressly limited to one and no estate to the other, the exchange will not be good; Perk. 275.

The word "Ex-
change" indis-
pensably requi-
site.

(3) It is very essential that the word "exchange" should not be omitted, it being so indispensably requisite in exchanges, that it cannot be supplied by any other word or circumlocution, neither will any averment that it was an exchange be admitted; Co. Lit. 50; Eton College v. Bishop of Winchester, 3 Wils. 438: Shep. Touch. 289, 290.

Lands taken in
exchange should
be set out.

(4) As in an exchange of estates of inheritance, either party on eviction of the lands taken by him in exchange, has a right by force of the warranty annexed to this assurance, to resume those given by him in exchange, a description of the premises given, as well as of those taken in exchange, should be set out in the deed, for the purpose of ascertaining and identifying the lands upon which such entry may be made.

Exchange
should be ef-
fected by two
separate deeds.

(5) It was formerly the mode, as appears by the printed forms, to include the exchange of each of the parties in the same deed; but as this would now, since the great increase of the stamp duties, very considerably augment the expense of the assurance, by the increase of length it would occasion to the deed and future attested copies, without rendering the deed at all more efficacious, the form here adopted is intended to avoid that inconvenience, and to give to each of the parties a simple conveyance of the lands taken by him in exchange, without including the conveyance of those by him given in exchange, which afterwards become excluded from his title deeds.

hereafter shall and will warrant and defend the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore given and granted in exchange, or expressed, or intended so to be, unto and to the use of the said C. D. his heirs and assigns for ever, against him the said A. B. and his heirs, and all persons whomsoever. IN WITNESS, &c.

EXCHANGE.

Frecholds, &c.
(common law).

. Although an exchange be of corporeal property, and is a common law conveyance, yet no livery of seisin is requisite, but only entry by each party on the lands of the other. This entry may be made either by the party himself in person, or by an attorney duly authorized by him in writing; and it may be made upon any part of the land, or upon one only of several messuages in the name of the rest; but it should be accompanied by a declaration in the presence of two or more witnesses, to the following purport:

Entry requisite to complete an exchange.

"Take notice that I here enter and take possession of this land, [or this messuage] in the name of, and as and for all and every the messuages, lands and hereditaments contained in this indenture, [it being holden by him] in pursuance of the grant thereby made to me thereof, by way of exchange, as in this indenture is expressed."

Form of entry.

A memorandum should then be indorsed on one of the skins to the following purport, and signed by two or more of the persons present:

"Memorandum, That entry was this day duly made by C. D. in his own proper person (or by an attorney for and on behalf of C. D. duly authorised for that purpose, by the power hereunto annexed) upon one of the messuages contained in the within written indenture, for and in the name of all the messuages, lands, and hereditaments therein described, with their appurtenances, in pursuance of the conveyance made to him by way of exchange, as in the within written indenture is expressed."

Memorandum of entry.

E. F. }
G. H. } *Witnesses.*

By the 55 Geo. 3. c. 184., it is enacted, that deeds by which any Stamp.
lands or other hereditaments, or heritable subjects in England or Scotland shall be conveyed, or any copyhold or customary lands and hereditaments in England shall be covenanted to be surrendered, in exchange for other lands and hereditaments, or heritable subjects, without any sum of money or any sum not exceeding £300, being paid or agreed to be paid for equality of exchange, shall be impressed with the ordinary duty of £1 15s.; but if the sum to be paid exceed £300 these

EXCHANGE.Freeholds, &c.
(common law).

deeds are subject to the same *ad-valorem* duty, as other conveyances on the sale of lands for a sum of money together with a further progressive duty of £1 5s. if they contain 2160 words, or upwards, and be not liable to the *ad-valorem* duty, but if liable, then with a progressive duty of £1 for every entire quantity of 1080 words contained therein; see *post*. Vol. III. "STAMP."

EXCHANGE.

*Freeholds
(lease and
release).*

No. CCCXLII.

A Conveyance of Freehold Lands in Exchange by Lease and Release (1).

THIS INDENTURE (2) of two parts, made the day of
in the year of our Lord 18 , BETWEEN (3) A. B. of, &c. (4) of Parties.
the one part, and C. D. of, &c. of the other part. WHEREAS the Recital of seisin.
said A. B. is seised (5) in his demesne as of fee, of and in certain

(1) An exchange may be made by a simple deed of exchange, properly so called, without being accompanied by a bargain and sale for a year to vest the possession, as in the preceding form, No. CCCXLI.; but as in an exchange, entry must be made by the parties, on the land by them respectively taken in exchange, in order to perfect the transfer, and make it binding on their respective heirs, Lit. s. 62. Co. Lit. 50. the better and usual way is to effect an exchange by lease and release, or some other assurance calculated to transfer the immediate possession to each party under the operation of the statute of uses, by which means the necessity of actual entry is avoided, and possession given by force of that statute; but these species of assurance can be had recourse to only where both parties are capable of being seised to an use, and the subject of exchange is also capable of such seisin; in other cases it may be made by fine, feoffment with livery, &c. but where the deed (not being a feoffment) operates as a proper exchange, no livery is necessary, the entry of the parties being equipotent to livery, Lit. s. 62. for which reason an exchange like a feoffment may be made by or with an infant, and will be valid unless avoided on his coming of age, or by his heirs on his death during his minority, Co. Lit. 51.

Entry not requisite when exchange effected by lease and release.

But this assurance can only be effected by persons capable of being seised to uses.

(2) See *ante*, p. 470. n. (2).

(3) See *ib.* (3).

(4) If the exchanger have previously taken the estate to himself, and a trustee to prevent dower, or the exchangee wish that the estate should be now limited to himself and a trustee for that purpose, such trustees should be made parties to the deed of the same part as their *celles qui trusts*.

Trustee to prevent dower.

(5) If either party took his estate to himself, and a trustee to prevent dower, say,

Trustee to prevent dower.

"WHEREAS the said A. B. is seised of, or beneficially entitled unto the lands and hereditaments firstly hereinafter described,

EXCHANGE.

Freeholds
(lease and
release).

Agreement to exchange.

WITNESS.
That in consi-
deration, &c.

lands and hereditaments firstly hereinafter described. AND WHEREAS the said C. D. is in like manner seised to him and his heirs of the lands and hereditaments secondly hereinafter described. AND WHEREAS the said A. B. and C. D. have mutually agreed to exchange their said several and respective lands and hereditaments for the lands and hereditaments of each other (1). Now THEREFORE THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, by and on the part of the said A. B., and for and in consideration of the lands and hereditaments secondly hereinafter described, and by certain (2) indentures of lease and release already engrossed, the lease bearing or intended to bear date the day next before the day of the date of the release, and the release bearing or intended to bear even date with these presents, conveyed and assured, or expressed and intended to be conveyed and assured to the said A. B. and his heirs

under or by virtue of an indenture bearing date the day of , and made between, &c. whereby the same were limited to the use of such person or persons for such estates and interests as he should by any deed or instrument in writing, sealed and delivered in the presence of two or more credible witnesses direct or appoint, with remainder in default of appointment to himself for life, with remainder to the said (*trustee*), in trust for him during his life, with remainder to himself in fee."

Exchange should be effected by separate assurances.

(1) Exchanges are sometimes effected by one deed, comprising reciprocal conveyances from each party to the other, of the lands respectively given and taken in exchange; and sometimes by two separate and distinct assurances (which will operate as mutual conveyances simply, or as exchanges, accordingly as the word exchange is or is not used in them). The first of these modes is attended with the most expense to the parties, by reason of the deed being nearly of double length. This precedent is therefore adapted to the latter mode, but suited to either by variations subjoined.

Mutual conveyances.

If the exchange be intended to be effected by mutual conveyances,
say,

“ And to make such reciprocal conveyances thereof as hereinafter are expressed.”

One assurance.

(2) If the exchange be intended to be perfected by one and the same deed, instead of these words, say,

"For and in consideration of the lands and hereditaments secondly hereinafter described, and intended to be by these presents conveyed and assured to him the said A. B. by the said C. D. as hereinafter is expressed."

by the said C. D. And also for and in consideration (1) of the sum of 5*s.* of lawful English money to the said A. B. in hand well and truly paid by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged. HE the said A. B. HATH (2) granted, bargained, sold, aliened and released, and by these presents DOTH grant, bargain, sell, alien, release and confirm unto the said C. D. and his heirs, ALL, &c. (*the lands of A. B.*) or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them now are or is or heretofore were, or was situated, tenanted, called, known, described or distinguished; together with all houses, outhouses, buildings, yards, cellars, vaults, areas, lights, ways, watercourses, woods, commons and commonage of every kind, and all and all manner of other rights, privileges, easements, advantages and appurtenances whatsoever to the same hereditaments and premises, or any of them belonging, or therewith holden, used, occupied or enjoyed; (All which said messuages or tenements, lands, hereditaments, and premises are now in the actual possession of, or legally vested in the said C. D. by virtue of a bargain and sale for a year to him thereof made by the said A. B. for 5*s.* consideration by indenture (3), bearing date the day next before

EXCHANGOR.

*Freeholds
(lease and
release).*

A. B grants and releases.

Parcels.

Reference to bargain and sale for a year.

(1) If any sum be given by way of equality of exchange, see *ante*, Consideration. p. 471. n. (2).

(2) If the exchangor took his estate to himself, and a trustee to prevent dower, say,

Trustee to prevent dower.

“ HE the said A. B. in pursuance and exercise of the power and authority given to him by the said hereinbefore recited indenture HATH directed, limited, and appointed, and by this present instrument in writing by him sealed and delivered in the presence of, and attested by the two credible persons whose names are or are intended to be hereupon indorsed as witnesses attesting the same, DOTH direct, limit and appoint; and by way of further assurance, and for the greater satisfaction of the said C. D. THEY the said A. B. and (*trustee*) HAVE and each of them HATH granted, bargained, sold, aliened and released, and by these presents Do, and each of them DOTH grant, bargain, sell, alien and release unto the said C. D., &c.”
as above.

(3) If the exchange be made by two separate conveyances the leases for a year will be in the common form, but if the exchange be perfected by one and the same assurance, A. B. will first bargain and sell his lands to C. D. to hold for one year in the usual way, and by a FURTHER WITNESS C. D. will bargain and sell his in like manner, *mutatis mutandis*.

Lease for a year.

EXCHANGE.

*Freeholds
(lease over
release).*

To HOLD to
C. D. and his
heirs.

the day of the date of these presents, in consideration of 5s. for the term of one year, commencing from the day next before the day of the date of the same indenture, and by force of the statute made for transferring uses unto possession). And the reversion and reversions, remainder and remainders, rents, issues and profits of the said messuages, lands, tenements, hereditaments and premises, and all the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity of him the said A. B. of, in, to, and out of the same messuages, lands, tenements, hereditaments and premises, and every of them, To HAVE AND TO HOLD the said messuages, tenements, hereditaments, and all and singular other the premises hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, with all and every the appurtenances, unto the said C. D. (1) his heirs and assigns, To the only proper use and behoof

Dower.

Limitation to
prevent dower.

(1) If the person to whom the exchange is made be married, it will be proper that the estate should be limited to a trustee, in order to prevent his wife's title to dower attaching upon it; in such case say,

“Unto the said C. D. and (*trustee*) and their heirs, but to the uses nevertheless, upon the trusts, and for the several ends, intents, and purposes hereinafter described or expressed concerning the same, (that is to say,) To THE USE of such person or persons, upon such trusts, and for such estates, ends, intents and purposes, and in such manner and form as the said C. D. or his appointees by any deed, will, or other instrument in writing, by him or them signed and sealed in the presence of, and attested by two or more credible witnesses, shall from time to time direct, limit, or appoint, or give or devise the same; and in default of any such direction, limitation or appointment, gift, or devise, as to the whole, or any part of the said premises, or any estate or interest therein then as to such part thereof, of which none shall be made or take effect, and when and as any estate or interest so directed, limited, or appointed shall determine, and in the mean time subject thereto, To THE USE of the said C. D. and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste, and with full power to commit waste; and upon the determination of that estate in his life-time, To THE USE of the said (*trustee*), his executors and administrators, during the life of the said C. D., but in trust for the said C. D. and his assigns; and upon the determination of the estate so limited to the said (*trustee*) as aforesaid, then To THE USE of the said C. D. his heirs and assigns for ever.”

of the said C. D. his heirs and assigns (1) for ever, in lieu (2) of and in exchange (3) for ALL, (4) &c. and which said several messuages, lands, tenements, hereditaments, and premises lastly hereinbefore described, are the same messuages, lands, tenements, hereditaments and premises as hereinbefore referred to, as secondly herein-after described and mentioned to be or to have been conveyed and assured to him the said A. B. and his heirs, by the said C. D. in and by the said hereinbefore in part recited indentures (5) of lease and release of even date with these presents (6). AND the said A. B. for himself, his heirs, executors and administrators, doth hereby covenant, declare and agree with and to the said C. D. his heirs and assigns in manner following, (that is to say) that he the said C. D. his heirs and assigns, shall or lawfully may from time to time, and at all times hereafter so long as the messuages, lands, tenements and hereditaments so granted, or to be granted and conveyed to him the said A. B. by the said C. D. in exchange by indenture of even date herewith as aforesaid, shall remain and continue to the use of the said A. B. his heirs and assigns, peaceably and quietly enter into and upon, and have, hold, occupy, possess and enjoy (7) the seve-

EXCHANGE.

*Freeholds
(lease and
release).*

In exchange for
the lands of
C. D.

Covenant for
quiet enjoyment.

(1) See *ante*, p. 472. n. (2).

(2) If the exchange be intended to be perfected by one and the same assurance, instead of setting out the lands taken in exchange, say,

Exchange per-
fected by one
assurance.

"In lieu of and in exchange for the several messuages, lands, tenements, hereditaments and premises, with their appurtenances, hereinafter described, and by these presents conveyed and assured unto the said A. B. and his heirs by the said C. D. as hereinafter is expressed."

(3) See *ante*, p. 472. n. (3).

(4) See *ib.* n. (4).

(5) See *ib.* n. (5).

(6) If the title deeds be not delivered they should be scheduled, and a covenant should be inserted for producing them, and delivering attested copies. The form of a covenant of this kind will be found, *ante*, p. 402.

Title deeds.

If the wife of the exchangor have a title to dower out of the lands given in exchange, a covenant to levy a fine must be inserted. The form of this covenant will be found *ante*, p. 362.

Fine requisite
in exchange if
wife entitled to
dower.

If no provision be made to prevent the wife's title to dower from attaching upon the land, she will be entitled upon her husband's decease to be endowed either of the land which was given, or which was taken in exchange, at her election, but not of both. Co. Lit. 316. Perk. s. 319. F. N. B. 149.

(7) Either a covenant for quiet enjoyment, or a warranty is usually annexed to deeds of exchange; but as the word exchange is holden to

Covenants
should be

EXCHANGE.Freeholds
(lease and
release).

Free from incumbrances.

For further assurance.

real messuages, lands, tenements, hereditaments and premises hereinbefore mentioned to be hereby granted, released and conveyed in exchange, or otherwise assured, and receive and take the rents, issues, and profits thereof to and for his and their own use and benefit, without any manner of lawful action, suit, trouble, molestation, interruption or disturbance whatsoever, of, from, or by the said A. B. his heirs or assigns, or any person or persons whomsoever. And that free and clear and freely and clearly acquitted, exonerated and discharged or otherwise by the said A. B. his heirs, executors or administrators, well and sufficiently protected, saved harmless and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, exchanges, mortgages, settlements, jointures, estate, right and title of or to dower, uses, trusts, devises, entails, judgments, decrees, statutes, recognizances, extents, executions, debts due to the king, or any of his predecessors, sequestrations, fines, amerciaments and all other estates, rights, titles, charges and incumbrances whatsoever had, made, done, executed or knowingly permitted, or suffered by the said A. B. or any of his ancestors, or any person or persons whomsoever. AND also that he the said A. B. and his heirs, and all and every other person and persons whomsoever, now, or at any time hereafter lawfully or equitably claiming, or having any estate, right, title, interest, or trust in, to or out of or concerning the said messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released or otherwise assured in exchange as aforesaid, or any of them, or any part thereof, shall and will from time to time and at all times hereafter so long as the messuages, lands, tenements, hereditaments and premises so granted and

general in deed of exchange.

Warranty implied on exchange is a special warranty.

imply a warranty, see *ante*, Vol. I. p. 137. n. (1). neither of them seems to be materially useful; and when covenants for the title are inserted, they should, if the deed be intended to operate as a proper exchange, be general, without the qualification of "for and notwithstanding, &c." as those words would qualify and reduce the warranty to the effect of the usual covenants for the title. But this warranty implied by the word exchange is not, it is to be observed, a *general* warranty as in other cases, to give other lands of equal value in case of eviction, but a *special* warranty to give back the same lands which were taken in exchange. See *Busturd's Ca. 4 Co. 21. Co. Lit. 174. Attorney-General v. Vigors, S. Ves. 256.* because the end of the warranty is, that in case of failure in the reciprocity of consideration, upon which the exchange is founded, each party should be placed in the same situation he was in before, which could not be done but by being put into possession of his own lands.

conveyed by the said C. D. to him the said A. B. in lieu thereof as aforesaid, shall remain, continue and be to the use of him the said A. B. his heirs and assigns, agreeably to the tenor and true intent and meaning of the said indenture of even date with these presents, upon the reasonable request, and at the costs and charges of the said C. D. his heirs or assigns, make, do, execute and perfect, or cause to be made, done, executed and perfected, all such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters and things in the law whatsoever, for the further, better, more perfectly and absolutely, or satisfactorily granting, conveying and assuring the said messuages, lands, tenements, hereditaments and premises unto and to the use of the said C. D. his heirs and assigns for ever, according to the true intent and meaning of these presents, as he the said C. D. his heirs and assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably advise and require; so as such further assurances, or any of them, do not contain nor imply any further or other covenant or warranty than against the person or persons who shall be required to make and execute the same, and his and their acts or deeds only; And so that the person or persons who shall be required to make or execute the same, shall not be compellable to go from his, her or their usual or then place of abode, without a reasonable and sufficient sum being previously paid or secured to him, her or them, for, or in respect of his, her or their time, trouble, or expenses. PROVIDED ALWAYS (1), and it is hereby declared and agreed by and between the said parties hereto, and the true intent and meaning of them, and of these presents is, and the said A. B. doth hereby for himself and his heirs declare and agree, that if the said C. D. his heirs or assigns, or any person or persons, lawfully or equitably claiming by, from, under or in trust for him, them, or any of them, shall at any time hereafter, without his or their wilful neglect or default, be evicted, or turned out of the possession of the said messuages, lands, tenements, hereditaments and premises hereinbefore granted and released, or other-

EXCHANGE.

*Freeholds
(lease and
release).*

Proviso for re-entry in case of eviction from the lands given in exchange.

(1) As a right of re-entry upon the lands given in exchange, in case of eviction from those taken in exchange, is legally incident to an exchange, this provision, though usually inserted, may be omitted without prejudice to the operation of the deed, as it is only an express declaration of what the law itself implies. It will, however give to either party a right of action on the particular contract, without pleading the force of the word exchange,

Proviso for re-entry in case of eviction implied.

EXCHANGE.

*Freeholds
(lease and
release).*

wise assured in exchange, or mentioned or intended so to be as aforesaid, by any person or persons now or hereafter lawfully or equitably having, claiming or possessing any estate, right, title, or interest in, to or out of the same premises, or any of them, under or through the said A. B. or any of his ancestors, or otherwise, for want or by defect of title in him the said A. B. so as that the said C. D. his heirs, or assigns, or any person or persons so lawfully or equitably claiming by, from, under or in trust for him, them or any of them, shall or may be prevented or hindered from holding and enjoying the same, according to the true intent and meaning of these presents, Then and in such case the said hereinbefore in part recited indentures of lease and release, or other assurance by way of exchange, bearing or intended to bear even date with these presents as aforesaid, and all and singular the estate, right, title and interest thereby granted and released, or otherwise assured to him the said A. B. and his heirs, and all and every covenant, clause, matter and thing therein contained, by and on the part of the said C. D. (like unto this present proviso or agreement), shall cease, determine and be utterly void to all intents and purposes whatsoever, and then and in such case it shall and may be lawful to and for the said C. D., his heirs or assigns, to enter into or upon the said messuages or tenements, lands, hereditaments and premises so thereby mentioned to be granted and released or otherwise assured to him the said A. B. and his heirs, in exchange for the messuages, lands and hereditaments comprised in these presents as aforesaid; and have, hold and enjoy the same to and for his and their own use and benefit, in such and the same or like manner to all intents and purposes whatsoever as he or they might or could have holden and enjoyed the same if the said last mentioned indentures had not been made, any thing therein or in these presents contained or implied to the contrary thereof in any wise notwithstanding (1). IN WITNESS, &c.

Exchange effected by one assurance.

(1) If the exchange be intended to be effected by one and the same assurance, add here a further witnessing part conveying the lands of C. D. to A. B. precisely as in the preceding conveyance from A. B. to C. D., and with the same warranty, reversing only the names.

Stamp.

* * See *ante*, p. 472. notes.

EXCHANGE.Forest Lands
(freeholds).

No. CCCXLIII.

**An Exchange of waste Forest Lands for Freehold Lands
adjoining (1).*

BE IT KNOWN that the Right Honourable A. B. and C. Commissioners of His Majesty's woods, forests and land revenues, being duly authorised by the Lords Commissioners of His Majesty's Treasury, in exercise of the powers vested in them by an act [*insert the title of this act*], do by these presents on behalf of His Majesty, his heirs and successors, give, grant and convey to X. Y. his heirs and assigns, ALL that piece or parcel of land coloured in the map or plan annexed to these presents, containing acres, roods, and perches, and abutting, &c. [*as the case may be*]. AND the said X. Y. doth by these presents, for himself and his heirs, by the direction of the said Commissioners of His Majesty's woods, forests and land revenues, give, grant and convey unto his said Majesty, King George the Third, and his heirs and successors, all that piece or parcel of land coloured in the said map or plan in exchange for the piece or parcel of land distinguished by a colour in the said map or plan. PROVIDED Re-entry. ALWAYS that if his said Majesty, his heirs or successors, or the said X. Y., his heirs or assigns, shall at any time without their respective wilful default be evicted of the same piece or parcel of land hereby respectively given, granted and conveyed to him or them re-

(1) By 52 Geo. 3. c. 161. s. 4. (amending 39 & 40 ib. c. 86. s. 29. 52 Geo. 3. c. and 50 ib. c. 116. s. 1.) the Lord High Treasurer or Lords Commissioners of His Majesty's Treasury may authorise the Commissioners of woods and forests and land revenue to grant any of the waste lands therein in exchange for other freehold or leasehold lands adjoining, not exceeding £1000 in value, and declaring that infancy, coverture or other disabilities shall be no impediment. 161.

EXCHANGE.Forest Lands
(freeholds).

spectively as aforesaid, it shall be lawful for the party or parties so evicted to enter into the piece or parcel of land contracted by him to be given in exchange as aforesaid, and to hold and enjoy the same in his or their former estate in the same manner as if the exchange hereby made had not been made. IN WITNESS, &c.

Entry.
Stamp.

*. * See *ante*, p. 473. notes.

The same it is conceived as between subject and subject, this case not appearing to be within any of the exceptions, see *post*. Vol. III. "STAMP."

EXCHANGE.

Forest Lands
(leaseholds).

No. CCCXLIV.

**An Exchange of Forest Waste Lands for Leasehold Premises adjoining (1).*

BE IT KNOWN that A. B. and C. Commissioners of His Majesty's woods, forests and land revenues, being duly authorised by the Lords Commissioners of His Majesty's Treasury in exercise of the powers vested in them by an act [*insert the title of this act*] do by these presents, on behalf of His Majesty, his heirs and successors, give, grant and demise unto X. Y., his executors, administrators and assigns, for the term of years, commencing from the day next before the day of the date of these presents, all that piece or parcel of land coloured in the map or plan annexed to these presents, containing acres, roods and perches, and abutting, &c. [*as the case may be*]. AND the said X. Y. doth by these presents, for himself, his executors and administrators, and by the direction of the said Commissioners of His Majesty's woods, forests and land revenues, give, grant and surrender to his Majesty, King George the Third, his heirs and successors, ALL that the said piece or parcel of land coloured in the said map or plan, and which is now vested in him the said X. Y. under a lease from the Crown for a term of years, of which years are yet to come and unexpired, in exchange for the said piece or parcel of land distinguished by a colour in the said map. IN WITNESS, &c.

(1) See *ante*, p. 483, n. (1). and p. 484. notes.

EXCHANGE.

Globe, &c.

No. CCCXLV.

**An Exchange of Glebe Lands, Tithes, &c. by an Incumbent (1).*

THIS INDENTURE, made the day of , in the
year of the reign, &c. and in the year of our Lord 18 ,
BETWEEN A. B. ordinary of the rectory, [vicarage, chapelry or
perpetual cure, *as the case may be*] of in the county of
C. D. of , patron of the said rectory, &c.
and the Rev. E. F. clerk, incumbent of the said rectory, &c. of the

55 Geo. S. c.
147.

(1) By the act of 17 Geo. 3. c. 53. as amended by 55 Geo. 3. c. 147. 56 ib. c. 52. 3 Geo. 4. c. 72. and 6 ib. c. 8, it is enacted, that parsons, vicars, and other incumbents of any ecclesiastical benefice, may by deed indented, with the consent of the parson and the bishop of the diocese, convey the parsonage or glebe-lands and appurtenants in exchange for any other house or advowson more convenient for the residence of such incumbent. But note that six calendar months' previous notice of such intention to exchange and of the situation and other particulars of the lands, &c. intended to be exchanged, must be given by three successive advertisements in some newspaper of general circulation in the county or place wherein the premises are situated, and by affixing such notice on the door of the church or chapel, on three successive Sundays. And by the last mentioned act of 6 Geo. 4. the power of exchange given by 55 Geo. 3. c. 4. is extended to any number of statute acres, and also to the taking of copyhold in exchange for freehold lands, &c. but such copyholds shall thence become freehold and such freeholds copyhold, and both be subject to the like rents, &c. as under their new tenure, as they were before subject to under their former tenure; and by stat. 1 Geo. 1. c. 10. (s. 13.) the incumbent, patron and ordinary of any augmented living or cure is empowered with the concurrence of the governors of Queen Anne's bounty, (see 2 & 3 An. c. 11.) to exchange all or any part of any estate settled for the augmentation of the maintenance of the poor clergy for any other estate in lands or tithes of equal or greater value, to be conveyed to the same uses; and by 43 Geo. 3. c. 107. this power is extended to all the messuages, buildings and lands belonging to any such augmented living or cure.

1 Geo. I. c. 10.

one part, and G. H. of _____ of the other part. WHEREAS in the execution of an act passed in the seventeenth year of the reign of His Majesty King George the Third, intituled, &c. [*here set forth the title of the act*] it hath been found convenient to exchange certain lands, &c. [*describing particularly the lands exchanged*] lying near and convenient to the parsonage house, belonging to the said rectory, &c. [*or if the house be lately acquired*; lying near a certain messuage, house or tenement and buildings lately purchased or otherwise acquired for the habitation of the minister of the said rectory, &c. under the powers of the said act,] and it hath been found most convenient and agreed by the said ordinary, patron and incumbent, that the glebe lands [*or tithe as the case may be*] hereinafter described belonging to the said rectory, &c. shall be exchanged in order to make an equivalent for such lands, and a contract hath been made with the said G. H. for the exchange of part of the glebe lands [*or of the tithe as the case may be*] belonging to the said rectory, &c. hereinafter mentioned (that is to say) [*here describe the particulars of the land or tithe proposed to be exchanged,*] which contract is hereby ratified and confirmed by the said ordinary, patron and incumbent. NOW THIS INDENTURE WITNESSETH, that the said A. B. C. D. and E. F. in order to carry the said contract into execution, and to fulfil the purposes of the said recited act in pursuance of the powers thereby to them given [and in consideration of the sum of £

the receipt whereof is hereby acknowledged on the back of this deed, which sum hath been paid and applied for or by way of equivalent of exchange of or for the lands hereinbefore described,] HAVE and each of them HATH granted, bargained, sold and exchanged, and by these presents Do and each of them DOth grant, bargain, sell and exchange unto and with the said G. H. and his heirs and assigns, ALL, &c. [*here describe the lands or tithes as the case may be*] with their and every of their rights, privileges and appurtenants, To HOLD to and to the use of the said G. H. his heirs and assigns for ever, in exchange for certain lands which belonged to the said G. H. and are by indentures of equal date herewith exchanged and conveyed to the said C. D. in trust for the sole use and benefit of the said E. F. and his successors, rectors, vicars, &c. [*as the case may be*] of the said living or benefice for the time being, for ever. AND the said A. B., C. D. and E. F. do hereby severally covenant for themselves, their several executors and administrators, to and with the said G. H., his heirs and assigns, that they nor any of them have not done any act whereby the said lands, [*or tithe as the case may be*] can or may be encumbered. AND that the said

EXCHANGE.

Glebe, &c.

WITNESS.

Ordinary, &c.
grants in ex-
change.Covenants for
title.

EXCHANGE.Glebe, &c.

G. H., his heirs and assigns, shall and may from time to time, for ever, hereafter peaceably and quietly hold and enjoy the said glebe lands [*or tithe as the case may be*] according to the true intent and meaning of the said Act, without any let, hindrance or interruption of or from them or any of them. IN WITNESS, &c.

Registry.

* * * The above deed must be registered in the register's office of the diocese, see 55 Geo. 3. c. 147. s. 19.

EXCHANGE.Life Estate.

FURTHER
WITNESS.
Second party
grants, &c. to
first party.

To hold to first
party for the
joint lives of the
parties.

Covenants for
title, &c. by first
party.

Further assur-
ance.

the premises hereinbefore granted and demised or otherwise assured or intended so to be, with their and every of their appurtenants, unto him the said (*second party*) and his assigns, from the of now last past, for and during the term of years from thence next ensuing, if they the said (*parties*) shall so long live. AND THIS INDENTURE FURTHER WITNESSETH, that for and in consideration of the grant and demise hereinbefore contained and made by the said (*first party*) to the said (*second party*) as aforesaid [and in consideration of the sum of 5s. of lawful money of Great Britain to the said (*second party*) in hand paid by the said (*first party*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] HE the said (*second party*) HATH granted, bargained, sold and demised, and by these presents DOth grant, bargain, sell and demise unto the said (*first party*), and his assigns, ALL, &c. TO HAVE AND TO HOLD the said messuages, lands, hereditaments, and all and singular other the premises lastly hereinbefore granted and demised or otherwise assured or intended so to be, with their and every of their appurtenants, unto him the said (*first party*) and his assigns, from the day of now last past, for and during the term of years thence next ensuing, if they the said (*parties*) shall so long live. AND the said (*first party*) doth hereby for himself, his heirs, executors and administrators, covenant, promise, and declare, to and with the said (*second party*) and his assigns, that he the said (*first party*) hath not at any time heretofore made, done, committed, or knowingly suffered, any act, matter or thing whatsoever, whereby or by means whereof the messuages, lands and hereditaments hereinbefore by him granted and demised or otherwise assured or intended so to be or any part thereof is, are, shall, can or may be impeached, charged, incumbered or prejudicially affected in title, estate or otherwise howsoever, during the term hereby expressed or intended to be granted or assured. AND (1) MOREOVER that he the said (*first party*) and all and every person and persons claiming or to claim from, by, under or in trust for him shall and will from time to time and at all times hereafter during the term hereby granted and demised or intended so to be upon every reasonable request, and at the costs and charges of the said (*second party*) or his assigns, make, do and execute or cause to be made, done and executed all such further and

Title.

(1) Here may be added covenant that the party has a right to demise, and for quiet enjoyment free from incumbrance, if required.

other lawful and reasonable acts, deeds, conveyances, assurances and things for the further and better or more satisfactorily granting and demising the same messuages, lands and hereditaments unto and to or for the use of the said (*second party*) and his assigns, for and during the residue which shall then be to come of the said term of . . . years, hereinbefore expressed to be granted and demised as aforesaid. AND, &c. [*Add similar covenants by the second party with the first party.*] IN WITNESS, &c.

EXCHANGE.
Life Estate.

Like covenants
by second party.

*** *Ad valorem* duty on sum, if any, given for equality of exchange; Stamp. see post. Vol. III. "STAMP," *Sched. verb.* "EXCHANGE."

FEOFFMENT.

*By infant heir
in gavelkind.*

No. CCCXLVII.

A Deed of Feoffment by an Infant Heir in Gavelkind (1).

Parties. THIS INDENTURE made the day of in the
Recital of death of ancestor. year of the reign, &c., and in the year of our Lord 18 , BE-
TWEEN (*the feoffor*) of, &c. of the one part, and the (*feoffee*) of, &c.
of the other part. WHEREAS (*the father*) late of in the
county of Kent (2) deceased, died seised in his demesne as of fee
of the several lands and hereditaments hereinafter particularly de-
scribed, which upon his decease descended unto , and the
said (*feoffor*), as his sons and co-heirs by the custom of gavelkind.
Of custom authorizing the conveyance by feoffment. AND WHEREAS by the said custom, heirs in gavelkind having at-
tained the age of fifteen years are authorized to enter upon the lands
so descended to them, and there by delivery of seisin thereof to con-
vey the same, as fully and effectually as if of the age of twenty-one
years at the common law. AND WHEREAS the said (*feoffor*) is
above the said age of fifteen years, that is to say, of the age of

Infant at the age
of 15 may en-
feoff gavelkind
lands.

(1) An infant holding lands in gavelkind is by the customary laws of that tenure considered as of full age at the age of fifteen, for the purpose of disposing of them for money, or other valuable considerations; see Robinson's Treat. Gav. 193; and, as some have thought, although no consideration appears; see *ib.* 217. But in order to give effect to his conveyance, it must be by feoffment, and livery made by the infant in person, and not by attorney.

But must be
seised of the
lands in fee
simple.

It seems also that the infant must be seised of the lands in fee-simple in possession; Vaughan v. Holden, Cro. Jac. 80. And according to some he must have taken the lands by descent, and not by will or purchase; Noy, 40. Lamb. 627; Bend. 33. pl. 52. But the better opinion appears to be, that this is not material. See Rob. Gav. 217.

Lands in Kent
presumed to be
gavelkind.

(2) It appears from the stat. of 18 Hen. 6. c. 2. that nearly all the land in Kent was formerly gavelkind; but since that time a very considerable quantity has been disgavelled by different statutes. The presumption of law, however, still is, that all the lands in that county are gavelkind until the contrary be proved; 2 Sid. 138. 153; 3 Keb. 216.

years, or thereabouts. AND WHEREAS, &c. (1)
 NOW THIS INDENTURE WITNESSETH, that by virtue and in pursuance of the said custom, and for and in consideration (2) of the sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*feoffor*) in hand well and truly paid by the said (*feoffee*), the receipt whereof the said (*feoffor*) doth hereby acknowledge, and of and from the same doth acquit and discharge the said (*feoffee*) as well by these presents as by the receipt or acknowledgment for the same sum hereupon indorsed, HE the said (*feoffor*) HATH given, granted, and enfeoffed, and by these presents DOTH give, grant, enfeoff and confirm unto the said (*feoffee*) and his heirs, ALL that the moiety, or half part, [*as the case may be*] (the whole into two equal moieties, or half parts, being considered as divided) of him the said (*feoffor*) of and in ALL, &c. or howsoever otherwise the said messuages, lands, tenements and hereditaments, or any of them now are or is, or heretofore were, or was situated, tenanted, called, known, described or

FEOFFMENT.

By infant heir
in gavelkind.

WITNESS.

That in pursuance of the custom,

the heir grants
and enfeoffs.

The parcels.

(1) Recite here the reason of the feoffment, as to make a partition, or the like. Recital.

(2) An infant being of age (and consequently out of guardianship) at the age of fifteen years, by the custom of gavelkind, Lamb. 624. it seems to follow, that he is to be deemed of full discretion to all intents and purposes, and may therefore receive and give a valid discharge for the consideration money; for it is expressly stated by Lambard, that he was at fifteen "completely out of guardianship," and might at that age sell his lands "for money, or other valuable consideration," and if he can sell for money, he may, according to the opinion of Lord Kenyon, when Master of the Rolls, as cited in *Crewe v. Dicken*, 4 Ves. 99. receive and give a discharge for the purchase money, and so is the form of the only deed I have been able to meet with in the books, which, after reciting "*Cumque etiam secundum consuetud. de Gavelkind de tempore cujus contrarium memoria hominum non existit usitat. et approbat. bene licet heredes Gavelkind, qui aetatem quindecim annorum excesser. eorum terr. seu Tenementa ad illorum voluntatem donare et vendere,*" goes on to state the payment of the consideration money to the heir. "*Sciatis nunc me praeferat. L. B. aetatis nunc novem decem annorum et amplius secundum consuetudinem pro et in consideratione summæ, &c. legalis, &c. mihi praeferat. L. per J. H. de. &c. bene et fideliter premanibus persolut. dedisse donasse et vendidisse, &c.*" See the PERFECT CONVEYANCER, Part. I. fol. 190, comprising various precedents stated to have been collected by Hendon, Noy, Mason, and Fleetwood, which, if correct, must be considered as a book of competent authority for the point in question.

Payment of the
consideration
money to the
infant, good.

It may, however, be proper to observe, that notwithstanding this privilege of alienation, at fifteen, an infant in gavelkind may have his age and all other privileges of an infant at the common law; 1 Roll. Ab. 144. G. pl. 11.

Gavelkind infant
although 15 has
the privileges of
common law
infant.

FEOFFMENT.By infant heir
in gavelkind.To HOLD to the
feoffee.

distinguished, and also of and in all other the several lands and hereditaments, of which he the said (*feoffor*) is seised, or entitled in gavelkind as aforesaid, and which so descended unto the said and (*feoffor*) in gavelkind, upon the decease of the said (*father*) as hereinbefore is mentioned; together with all and all manner of rights, privileges, appendages, advantages and appurtenances to the same belonging, or with the same or any part thereof now or heretofore holden, used, occupied, or enjoyed. And all the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him the said (*feoffor*) of, in, or to the same premises, or any of them. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore granted, enfeoffed, and confirmed, or mentioned or intended so to be, with their and every of their appurtenances, unto the said (*feoffee*), his heirs and assigns, to and for the use, behoof and benefit of him the said (*feoffee*), his heirs and assigns, for ever (1). IN WITNESS, &c.

Warranty in a
feoffment by an
infant heir in
gavelkind, void.

(1) No warranty can be annexed to a feoffment made by an infant of gavelkind lands. All customs which are derogatory from the common law must be construed strictly, and as this custom reaches no further than a conveyance by a naked feoffment, a warranty is not comprehended in it, and will therefore consequently be void; 1 Roll. Ab. 568. H. pl. 5.

Stamp.

. Same as in other conveyances.

FEOFFMENT.By Termor.

No. CCCXLVIII.

A Deed of Feoffment by a Termor, for the purpose of acquiring the Fee (1).

THIS INDENTURE of _____ parts, made the _____ day of Feoffment,
 , in the _____ year of the reign, &c. and in the year _____

(1) A feoffment may be defined to be a conveyance of *corporeal* hereditaments from one person or body corporate to another, by delivery of possession, which may be either upon or in view of the hereditaments so conveyed, and the ceremony of performing this is usually called livery of seisin.

A feoffment is the oldest and most efficacious conveyance provided by the common law for the assurance of land; and although not now very often had recourse to, is by no means an obsolete conveyance, and may be used with advantage in most cases where the actual seisin of the land is proper to be given, either for divesting any prior wrongful estate acquired by a disseisor or others, or for the purpose of giving effect to some subsequent assurance, which requires the seisin to be in the grantor; the operation of a feoffment being to clear all disseisins, intrusions and other wrongful and defeasible estates, where the entry of the feoffor is lawful, (which cannot be done even by fine or recovery, Co. Lit. 9. a.; Smith dem. *Dormer v. Packhurst*, 3 Atk. 135.) and to vest the freehold in the feoffee, and is the only conveyance by which a tenant for years, by elegit, statute merchant or staple, or a copyholder can create an estate of freehold by disseisin, Co. Lit. 49. a.; 2 Inst. 413. for if a tenant for years, &c. levy a fine without having previously created a fee by disseisin, it may be avoided by pleading *partes finis nihil habuerunt*; Hunt v. Bourne, 1 Salk. 339; Carter v. Barnardiston, 1 P. Wms. 519; Smith dem. *Dormer v. Packhurst*, 3 Atk. 135. Whereas if a feoffment with livery of seisin be made previously to the fine, the feoffee after five years' non-claim by the reversioner, (he being under no disability,) will have an indefeasible title to the fee-simple, Shield v. At-

FEOFFMENT.By Termor.

Parties.

WITNESS.

The feoffor
grants.

of our Lord 18 , BETWEEN (*the feoffor*) of, &c. of the one part, and (*the feoffee*) of, &c. of the other part, WITNESSETH, that for the purpose of vesting the freehold of the hereditaments and pre-

kins, 3 Atk. 562, as the livery will create an estate of freehold by disseisin, and the freehold thus created will be sufficient to support the fine levied upon it. It is to be observed, however, that a feoffment can be made only of land or other corporeal hereditaments, as these alone are capable of delivery of possession. The case supposed in the text is that of a mortgagee for years, in possession under a decree of foreclosure, who on account of the length of time elapsed, is unable to discover the reversioner, and is therefore desirous of acquiring the freehold and inheritance, by the means above stated, and which is almost the only case in which the fee can be acquired by the termor; for if a tenant at will, copyholder, or lessee for years, make a feoffment, and levy a fine, it will, by reason of the privity that subsists between him and the owner of the inheritance, be considered fraudulent; *Fermer's Ca.* 3 Co. 77; *Shield v. Atkins*, 3 Atk. 562; *Smith dem. Dormer v. Packhurst*, ib. 141; *Whaley v. Tancred*, 1 Vent. 241; *Sir T. Raym.* 219, S. C.

* Since the above note was written by the former editor, the doctrine referred to has been in some degree qualified by recent opinions; but without entering into a discussion of the question, which on account of the little probability of a case of this kind frequently occurring, and of its importance when it does occur being such that an attempt to acquire the fee by the means proposed should never be made but under the sanction of a professional opinion taken upon the actual circumstances of the case, I shall merely present the student with some remarks on the point, by made two of our most modern and learned writers.

"It is fit to guard the profession against the practice of termors for years making feoffments to gain the freehold though they first assign their terms to a trustee with a view to protect against forfeiture and to attend the inheritance. A late decision of the Court of King's Bench, (Hilary Term, 1817) on a motion for a new trial treated the term as forfeited. There was abundance of principle and even of decision to lead to that conclusion. In the first place it is a fraud on the part of the termor to attempt to gain the freehold. Secondly, The admission by the assignee of a title in the feoffee to the reversion is an attornment to a stranger; and by the rules of the common law attornment by a termor to a stranger is an abandonment of the tenancy, a destruction of the privity between the termor and the reversioner, and a forfeiture of the term." *Prest. Conv.* p. xxxii; and see *Throgmorton v. Whelpdale*, B. R. Hil. 9 Geo. 3. B. N. P. 96; *Doe ex dem. Foster v. Williams*, Cowp. 621; *Peake* 196; *Espinasse* 462, per Lord Redesdale, in *Hovenden v. Lord Annesley*, 2 Schoales and Lefroy, p. 625; also *Kelly v. Power*, 2 Ball and Beat. 245; *Cholmondeley v. Clinton*, 2 Mer. 238.

"It is a common practice (a practice to be now carefully avoided) for a termor who wishes to acquire the freehold to make a feoffment and then levy a fine; first assigning the term to attend the in-

mises hereinafter described in the said (*feoffee*) to the uses hereinafter expressed, HE the said (*feoffor*), HATH given, granted and enfeoffed, and by these presents DOTH give, grant, enfeoff and confirm unto the said (*feoffee*) and his heirs, ALL, &c. or howsoever otherwise, the said messuages, lands, tenements, hereditaments and premises, or any or either of them now are, or is, or heretofore have been situated, tenanted, called, known, described or distinguished; together with all houses (1), outhouses, buildings, barns, stables, coach-houses, dovehouses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, land covered with water, watercourses, rivers, streams, springs, timber and other trees, woods,

FEOFFMENT.

By Termor.

Parcels.

heritance. It seems better that a stranger should enter and make the feoffment, and that the term being restored by *entry*, the termor should make an assignment to attend the inheritance, and afterwards accept a conveyance of the inheritance; and even then it may be doubted whether the termor does not by his re-entry regain the seisin to his reversioner; also, whether, by acceding to the arrangement, he does not forfeit the term. But if a disseisin turn the right of the reversioner into a right of action, then the re-entry of the termor will not revive the seisin of the former owner. The general rule is, that the possession of the termor is, in effect, the seisin of the owner of the reversion." Watkins, Principles by Preston, p. 216.

"A termor may gain the fee by the following means. In the first place the term should be assigned to a trustee, then a feoffment of the lands should be executed; and after the feoffment, the trustee to whom the term is assigned, should declare that he will stand possessed of the lands during the term, in trust to attend the inheritance according to the uses created by the feoffment. This mode will give the purchaser a good title against all persons except the lessor or reversioner; and as he can claim no title till the expiration of the term, the title will be substantially good against all the world, if the term be a long one. At the same time it is evident that there are certain privileges attached to a freehold estate, which could not be claimed by the purchaser in derogation of the rights of the reversioner. Indeed this mode of making a title should only be resorted to where it is not known who is the lessor or reversioner. See *Saunders v. Lord Annesley*, 2 Scho. and Lef. 73. There would be no difficulty in holding such a feoffment void, as fraudulent; but it would be quite impossible to hold it a forfeiture of the term in the trustee." Sugd. Vend. and Pur. p. 261, n. (1), 6th Edition.

(1) A particular description of the premises of which it is intended to levy a fine, should be inserted here, describing them by their ancient and present name, situation, boundary, &c. Parcels.

FEOFFMENT.

By Termor.

To hold to the
feoffee to the
use of the feoffor.

To the intent
that he may be
enabled to levy
a fine.

Declaration of
uses of fine.

underwoods, and the ground and soil thereof, and all and all manner of other rights, privileges, advantages and appurtenances to the same premises belonging, or with the same, or any of them now or heretofore holden, used, occupied or enjoyed (1); and all the estate, right, title, interest, property, claim and demand whatsoever, both at law and in equity of him the said (*feoffor*), of, in, or to the same premises or any of them. To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments and all and singular other the premises hereinbefore granted, enfeoffed and confirmed, or mentioned or intended so to be, with their and every of their appurtenances, unto the said (*feoffee*), his heirs and assigns, but to the use of him the said (*feoffee*), his heirs and assigns, for ever; to and for the end, intent and purpose, that he the said (*feoffor*), his heirs or assigns, may acquire an absolute seisin for an estate of freehold in the said premises, and be thereby enabled to levy one or more fine or fines *sur cognizance de droit come ceo*, &c. as of term now next ensuing or any subsequent term, with proclamations to be thereupon had in pursuance of the statute in such case provided (2) of the same premises, to the use of himself and his heirs for ever. AND it is hereby declared and agreed, that the said fine or fines so to be acknowledged and levied of the said messuages, lands, tenements and hereditaments, as hereinbefore is mentioned, shall be and enure, and shall at all times, and from time to time be construed, deemed and taken to be and enure, and the person or persons to whom the said fine or fines, and other assurances respectively shall or may be levied, made and executed, shall stand and be seised as to all and singular the messuages, lands, tenements and hereditaments by these presents granted and enfeoffed, or otherwise assured, or expressed or intended so to be,

"Reversion and
reversions."

(1) The words "and the reversion and reversions, remainder and remainders," &c. are generally inserted in deeds of feoffment, as in the conveyance by release; but this seems to be a mere inadvertency, owing to a want of discrimination between the two assurances. By the reversion in the release is meant that which is expectant upon the determination of the previous estate or lease for a year; but there can be no such reversion in a deed of feoffment which transfers the whole of the feoffor's interest.

Fine must be
levied of a term
subsequent to
the livery.

(2) Care must be taken that the fine be levied of a term subsequent to the livery, in order that the termor may have the freehold in him for the fine to operate upon at the time of its being levied.

unto and to and for the use and behoof of the said (*feoffor*) (1),
his heirs and assigns for ever (2). IN WITNESS, &c.

FEOFFMENT.

By Termor.

(1) If the feoffor be married, and wish that the estate which it is intended to acquire by the fine should be limited to a trustee to prevent dower, insert here the limitation given *ante*, p. 478, n. (1). Limitation to prevent dower.

(2) No warranty will of course be requisite in the present, as in other cases of feoffment, the intent being not to give a title to the feoffee, but to vest the seisin in him only for the purpose of its being transferred to the feoffor himself by the statute of uses, and as the feoffee is in this instance merely a trustee for him, the insertion of a warranty would have the effect of making the feoffor warrant the estate to himself. Warranty not requisite in feoffment merely to give seisin.

. In order to give effect to a deed of feoffment, actual possession of the land must be delivered by the feoffor, and taken by the feoffee, either personally or by attorney, in the presence of witnesses; for by the old common law, and before the use of written evidence, the actual delivery of possession by the one party to the other was absolutely necessary to give the lord notice of the change of tenancy; and the statute of frauds, requiring all conveyances, &c. affecting land to be in writing, has not altered the mode of transfer required before that act, but only aided the proof of its having been done, by requiring it to be in writing. Practical remarks.
Possession must be given and taken either personally or by attorney to perfect a feoffment.

This delivery of possession may be by any mode which indicates a symbolical delivery of the thing itself, the usual mode of doing which is by the feoffor taking hold of the key of the door, (if the feoffment be of a house, the door being the extreme and principal part of the thing delivered,) and if of land a piece of the clod or soil, in the presence of any indefinite number of witnesses, saying to the following purport: How to be given and taken.

“I hereby deliver unto (*the feoffee*) named in this indenture, the hereditaments therein comprised, to the use of him and his heirs, [*or to, for and upon the uses, trusts, intents and purposes in the said indenture expressed*] in pursuance and according to the true intent and meaning of the same indenture.”

It will then be proper that a memorandum of such livery having been made should be indorsed on the feoffment, the form of which may be as follows:

Memorandum of Livery of Seisin.

“Memorandum, That on the day and year first within written peaceable and quiet possession and full seisin of the within mentioned messuages, lands, tenements and hereditaments were openly had and taken by the within named (*feoffor*), and by him delivered to the within named (*feoffee*), to hold the same to the said (*feoffee*) and his heirs, to the use of him and his

FEOFFMENT.By Termor.

heirs for ever, [or to, upon and for the uses, trusts, intents and purposes in the said indenture expressed] according to the purport and true intent and meaning of the within written indenture, in the presence of us whose names are hereunto subscribed."

If feoffment contain letter of attorney, additional stamp requisite.

By the 55 Geo. 3. cap. 184. a feoffment of lands or other hereditaments, if not otherwise charged as a purchase-deed, &c. and not containing 2160 words, requires a deed stamp only of £1 15s.; but if it contain any letter or letters of attorney to deliver or receive seisin, then a further duty of £1 15s.; see *post*. Vol. III. "STAMP," *Sched. verb.* "FEOFFMENT."

FINE.

Come ceo.

No. CCCXLIX.

A Fine (1) *sur cognizance de droit come ceo, &c.**Variations* where it is levied by a man and his wife. Where there are several cognizors. Where there are several cognizees.

PRÆCIPE.

Yorkshire } *COMMAND John Stiles, Esquire, (the deforçant,*
To wit. } *or cognizor) that justly and without delay, he per-*

(1) The word "fine", in its legal acceptation, signifies a final agreement upon record made with the king's licence, for settling and ending all controversies relative to lands, and acknowledged by the parties to the same, upon a writ of covenant, or other original writ, before the justices of the Court of Common Pleas, or other person specially authorized for that purpose under a writ of *dedimus potestatem*.

The nature of a fine.

Fines were originally really amicable compositions of suits actually commenced, but for several centuries past have been merely fictitious proceedings, in order to transfer or secure real property by a mode more efficacious than ordinary conveyances. Co. Lit. 121. n. (1).

There are five parts of every fine, First, the original writ of covenant, or *præcipe*, which is a writ issuing out of the Court of Chancery, at the instance of the plaintiff, or person to whom the fine is intended to be levied, directed to the sheriff of the county where the lands lie, to command the defendant, or person levying the fine, to perform the supposed agreement between them; Secondly, the licence, or leave from the king for the parties to compromise the suit; Thirdly, the concord or agreement made by virtue of that licence, whereby the lands in dispute are acknowledged by the defendant or deforçant, as he is called, to be the right of the plaintiff; Fourthly, the note of the fine, which is an abstract of the original writ, and the concord; and Fifthly, the foot or *chirograph*, which includes the time and place, and before whom the concord was made; of this two parts are made, which from their being indented, are called the indentures, and being delivered to the plaintiff, form part of his title deeds. If the fine be levied with proclamations, which in some cases as hereinafter mentioned is necessary for its intended operation, a certificate of its having been proclaimed is indorsed on one part of the indentures. But this indorsement is not alone sufficient evidence of their having been made. Doe dem. Hatch v. Bluck, 2 Maul. 170.

Parts of a fine.

There are four different kinds of fines treated of in the books; namely, a fine *sur cognizance de droit come ceo que il ad de son done*, a fine

FINE.

*Come cas.*form to *Richard Baker, gentlemen, (1) the plaintiff or cogni-*By whom fines
may be levied.

sur concessit, a fine sur cognizance de droit tantum, and a fine sur done grant et render. The three first are in general use, and the form of each will be found in the text, but the fourth is now nearly obsolete, a fine of this description not appearing to have been passed for many years.

A fine may be levied by any person, with the exception of the king, against whom a writ of covenant cannot be brought, and aggregate corporations, who cannot appear otherwise than by attorney, Co. Read. 7. sed vide contra 1 Leon. 184. Persons attainted of treason or felony may levy fines to bind themselves and their heirs, but not the king or lord; Shep. Touch. 7 West. Symb. 13. So may persons outlawed in personal actions; and a fine by an alien friend will be good against all persons except the king, and against him until office be found; Cruttenden v. Bourbell, 1 Taunt. 145. A fine, however, ought not to be levied by infants, idiots, or married women without the concurrence of their husbands, but if one be levied, it will be good, for the law will suppose that the infant was of age, and will not presume that the judge would take it up on any other terms. Hearle v. Greenbank, 3 Atk. 711; but an infant may during his minority reverse a fine levied by him during his infancy, 12 Co. 122; 2 Roll. Ab. 15; Achery v. Vernon; Willes 160; and the husband may, during the coverture, avoid any fine levied by his wife without his concurrence. Co. Lit. 46; Ex parte Abney, 1 Taunt 37; while a fine if permitted to be levied by an idiot, Mansfield's Ca. 12 Co. 123, or by persons who are born deaf, dumb, and blind, will be binding upon them and their heirs; and there are no legal means of avoiding it. In order however, to guard against the impositions which were daily practised, there is a rule of court, Hilary Term, 17 Geo. 2, which requires the affidavit of one of the commissioners, before whom the fine is acknowledged, that the parties are of full age, and of competent understanding.

Number of
parties.

Any number of persons having separate interests in one tenement, of whatever value, may concur to pass their interests to any number of purchasers by one fine, 5 Taunt. 265; but several proprietors of different lands cannot regularly pass their estates by one fine, although situated in one county. Where, however, the lands are under the value of £200, and an affidavit is made to that effect, the Court will, to save expence, allow them to join in the same fine, ib. and see Wils. 47; 1 Cru. 32.

Estate of free-
hold must be in
cognizor, or
cognizee.

If the fine be levied for the purpose of operating as a bar by non-claim, it is necessary that an estate of freehold, either rightfully or by disseisin, should be vested in one of the parties; but whether it be in the cognizor or cognizee, is immaterial; however, between the parties themselves, and also privies, such as heirs or issue in tail, a fine levied by the ancestor, will be good, although there were no estate of freehold either in him or the cognizee.

Man and wife.

(1) If the fine be levied by a man and his wife, say,

"COMMAND *John Stiles, Esquire, and Mary his wife, that justly and without delay, they perform, &c.*

Several cogni-
zors.

If by several cognizors, say,

"COMMAND *John Stiles, Esquire, Thomas Wilson, gent. and William Hammond, gent. that justly, &c.*

see, (1) the covenant made between them of (2) the honour (3) of
 , with the appurtenances, the castle of , with
 the appurtenances, the forest (4) of , with the appurte-

FINE.

Come ceo.

(1) All persons who may be grantees in a deed may be cognizees in a fine, as may the king, infants, married women, persons attainted, and corporations, whether aggregate or sole.

All persons may be cognizees.

If there be several cognizees, say,

Several cognizees.

“ To *Richard Baker, gent.* and *James Nokes, gent.*

(2) In placing the parcels in a writ of covenant, the following rules must be observed: First, To place the more worthy things before the less worthy, as an honour before a castle, a castle before a manor, a manor before a messuage, a messuage before land, &c. Secondly, Things general before things special, as land generally, before meadow or pasture land. Thirdly, Whole things before their parts, as an entire manor before the moiety of a manor. Fourthly, Things excepted must follow the things out of which they are excepted; and, if there be several parcels in one writ, that parcel out of which the exception is to be made must be placed last.

Rules to be observed in placing the parcels.

For the purpose of explaining more fully to the practitioner the order in which the several parcels should follow each other in a writ of covenant, the form above given has been so framed as to comprise almost every description of property of which a fine may be levied, and at the same time each has been placed in its proper situation; in drawing from this precedent, therefore, such particulars only are to be omitted, as from the circumstances of each case may be irrelevant.

(3) An honour is the superior seignior on which other inferior lordships or manors depend, by the performance of some services to those who are lords of them. Before the statute of 18 Ed. I. the greater barons who held a large extent of lands under the crown, frequently granted out smaller manors to inferior persons, to be holden of themselves in the same manner as their own lands were holden. These manors still continue to be holden of a superior lord, who is usually stiled the lord paramount, and his seignior an honour.

Honour.

An honour, however, being a manor, although a superior one, will still pass under that name, as will also a castle and a hundred, although each may be demanded by its appropriate name.

(4) A forest is a certain territory, or circuit of woody grounds and pastures, filled with beasts of chase, under the king's protection, for his royal recreation, with particular laws, privileges, courts, and offices belonging to it; and as parks are inclosed with walls and pales, so forests are inclosed by metes and bounds, as rivers, highways, hills, &c. which are an inclosure in law, and without which there cannot be a forest; these are known either by matter of record or prescription, and may be ascertained by commission from the Lord Chancellor. 4 Inst. 317. A forest strictly taken cannot be in the hands of any but the king, for no one but the king has power to grant commission to any person to be a justice in the Eyre of the Forest; but if the king grant a forest to a subject, and also grant that upon request made in Chancery, he and his heirs shall have justices of the forest, then the subject hath a

Forest.

FINE.
Come ceo. nances, the chase (1) of , with the appurtenances, the park (2) of , with the appurtenances, the hundred of , with the appurtenances, the manor (3) of , with the appurtenances, three messuages (4), three cottages, one shop, one cellar, two tofts (5), five barns, one windmill (6), one water-mill, two dove-houses, two gardens, three curtilages (7), five orchards, one hundred acres of land (8), one hundred

forest in law. Co. Lit. 233. a. 4 Inst. 314. Case of Leicester forest, Cro. Jac. 155; without this especial grant, the forest would lose its name, and become a chase.

Chase.

(1) A chase is of a middle nature, between a forest and a park; it is not endowed with so many liberties as a forest, as it has not courts of justice attached to it, and it may be in the hands of a subject, which a forest we have seen cannot. It differs from a park, in not being inclosed, and is usually of a much larger compass, extending not only over a man's own grounds, but also over those of others; being indeed the liberty of keeping and hunting beasts of chase, or royal game there, protected even from the owner of the land; and see *Rivers v. Pratt*, 3 Moor. 582. 1 Brod. and B. 265. S. C. A chase, like a park, cannot be made without a licence from the king, under the broad seal.

Park.

(2) A park, in its legal signification, is a quantity of ground, inclosed either by a wall, or paling, for the keeping of beasts of chase. It is not, as Blackstone observes, every field or common, which a gentleman chooses to inclose, and stock with a herd of deer, that constitutes a legal park, and is to be demanded by that name in a writ of covenant; but the king's grant, or at least immemorial prescription is necessary to make it so. 2 Inst. 199. 11 Co. 86.

Manor.

(3) A manor may be demanded by its proper name, without mentioning the town in which it lies, although it is usual to do so; but if it extend into several towns, and the name of one be omitted, no part of the manor in that town will pass.

Messuage.

(4) A messuage is a dwelling-house, with a small quantity of land adjoining. By this name a chapel or hospital, a curtilage, a garden, an orchard, a dove-house, a shop, a mill, a cottage, a toft or chamber, a cellar, &c. will pass, although each may be demanded by its proper name.

Toft.

(5) A toft is the site or place where a messuage formerly stood, which, having been decayed or burnt down, hath not been re-built.

Mill.

(6) A mill may be demanded by that name alone, without specifying whether it be a windmill or watermill, though the latter is more usual.

Curtilage.

(7) A curtilage is a vacant space, or plot of ground, lying adjacent to a messuage.

The number of acres, &c. demanded should exceed the actual quantity.

(8) It may surprise the young practitioner to find an enumeration of so great a number of acres of land, &c. in the præcipe of a fine, beyond what, by the description of parcels in the declaration of uses, appear, in fact, to be the actual subject of the assurance, but the reason of this is, that as no greater quantity will pass by the fine than is ex-

acres (1) of meadow, one hundred acres of pasture, forty acres of wood, forty acres of furze and heath, one hundred acres of moor, one hundred acres of fresh marsh, one hundred acres of salt marsh, one hundred acres of rush land, fifty acres of broom, one hundred acres of land covered with water (2); All mines, quarries of stone, and other minerals; an annual rent of ten pounds; common of pasture for all manner of cattle, common of turbary, common of estovers, liberty of foldage and of a sheep-walk, free warren, free fishery in the waters of , a boilery of salt water, a passage over the river , one wharf, one quay, two fairs, with the appurtenances, two markets, with the appurtenances, court leet, court baron, view of frank-pledge, with the appurtenances, goods and chattels waived, estrays, deodands, goods and chattels of felons, fugitives, outlaws, and persons attainted, felons of themselves, treasure trove, wrecks of the sea, the return of all writs whatsoever, and all liberties and franchises, with the appurtenances, in and (3); the rectory of the church of ,

FINE.

Come coo.

pressed in the declaration of uses, whatever number may be mentioned in the præcipe, see *Jenk. Cent.* 254; *Favelly v. Faston*, *Cro. Car.* 269; *Eyton v. Eyton*, 1 *Bro. Ch. Ca.* 151. And as the courts will not allow more to pass than was intended to be included, see 1 *Prest. Pract.* 272; it has become the practice, for precaution-sake, to insert double or treble the real quantity; the only inconvenience of which is, that it incurs an increase of the king's silver fine, which is taken upon the value of the premises comprised in the concord, unless an affidavit be made as to the actual quantity of which the fine is intended to be levied, *Wheeler v. Heseltine*, 2 *Bos. and Pul.* 560; *Dowse v. Reeve*, *ib.* 578.

(1) Land must be demanded by the certain measure of its superficial quantity, as so many acres; in like manner, wood, underwood, heath, moor, rush, marsh, and broom, may be demanded by the number of acres; and land, unless otherwise described, is understood to be arable, *Massey v. Rice*, *Cowp.* 346; and the acres customary, and not statute acres. See *Waddy v. Newton*, 8 *Mod.* 276. Land.

(2) Water must not be demanded by that name; but as so many acres of land covered with water, otherwise the soil would not pass, but only the liberty of fishing. *Co. Lit.* 4. b. Water.

(3) Insert here the parish and county in which the lands are situated. County.

If the lands lie in different counties, there must be several writs of covenant, viz. one for each county; the reason of which is, that each writ can be executed only by the sheriff of the county to whom it is directed. Hence, where a fine is levied of a New River Share there must be three several præcipes, on account of that river running through three several counties, viz. Hertford, Middlesex, and London. See *Drybutter v. Bartholomew*, 2 *P. Wms.* 127; but one concord will in

If lands lie in different counties several præcipes are necessary.

FINE.
Come ceo.

(1) with the appurtenances, and all and all manner of tithes whatsoever belonging or appertaining to the said rectory; the advowson (2) of the church of _____, and the advowson of the vicarage (3) of the church of _____ (4); and unless, &c. (5)

Parsonages.

either case be sufficient, although the practice varies as to having one concord only, or one for each county.

Presentation.

(1) Parsonages, rectories, advowsons, vicarages, or tithes impropriate, pass not by the name of the *Advowson* of the church, but of "the *Rectory* of the church of _____, with the appurtenances."

Vicarage endowed.

(2) If the fine be intended to be levied of a representation only, it must be of "the advowson of the church of _____," and the word "appurtenances" must be omitted.

Vicarage unendowed.

(3) If of vicarages endowed, the writ must be of "the advowson of the vicarage of the church of _____," omitting the word "appurtenances."

Moiety.

A vicarage not endowed, will pass under the words of "the advowson of the church of _____."

(4) If the fine be levied of a moiety, or other portion of the inheritance, add,

"A moiety of the manor of _____, with the appurtenances, of four messuages, two cottages, two gardens, thirty acres of land, thirty acres of meadow, thirty acres of pasture, and a moiety of the rectory of the church of _____, &c." *as the case may be.*

Tithes.

If the fine be levied of tithes, say,

"The tithes of corn, grain, and hay, with the appurtenances in _____, and the tithes of wool, lambs, oblations, obventions, and emoluments, and of all other tithes whatsoever, coming, growing, and renewing in _____ aforesaid."

Rent.

If of a rent, say,

"Of the yearly rent of £ _____, issuing out of and from two messuages, thirty acres of land, twenty acres of meadow, twenty acres of pasture," &c. *as the case may be.*

Exception.

If there be any exception to be made out of part of the lands of which the fine is intended to be levied, the parcel from which such exception is to be made should be placed last, as,

"The manor of _____, with the appurtenances in _____, except one messuage, two acres of land, and the advowson of the church of _____."

(5) This &c. which is supplied by the cursitor in the writ of covenant, means "unless he shall do so, and the cognizee shall give security that his suit shall be prosecuted; then summon by good summoners the cognizor, that he be before the justices at Westminster on a day named, to show wherefore he will not do it."

FINE.

Come ceo
(concord).

CONCORD.

AND the agreement is such, to wit, that the aforesaid *John* (1) hath (2) acknowledged the aforesaid forest (3), chase, park, manors, tenements (4), mines, quarries, rent, commons, liberties, franchises, rectories, prebend, and moiety (5), and part aforesaid, with the appurtenances, to be the right of him the said *Richard* (6), as those

(1) If the cognizor or cognizee be a duke, marquis, earl, or viscount, he must be called by his title, as "the said duke, marquis, &c.;" if he be a baron, "the said Charles, Lord _____," but if he be a baronet, knight, or gentleman, he must be called by his Christian name only, as in the text. Parties.

If the fine be levied by a father and son having the same Christian name, the description must be "the said *John*, and *John* the younger." Father and son.

The only case in which the surname can be used is where there are two cognizors having the same Christian name, in which case they cannot be described otherwise than by the addition of their surname. Two persons of the same name.

(2) If the fine be levied by a man and his wife, say,

"The aforesaid *John* and *Mary* his wife, have acknowledged, &c." Husband and wife.

If by several cognizors, say,

"The aforesaid *John*, *Thomas*, and *William*, have acknowledged," &c. Several cognizors.

(3) The particular description of the parcels contained in the writ of covenant need not again be set out in the concord, but such general words only should be used as will comprehend them. Parcels need not be set out in the concord.

(4) A tenement in common parlance means a messuage or dwelling-house; Goodright dem. Welch v. Flood, 3 Wils. 23; but in its original, proper, and legal sense, it signifies any thing which may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible or of an unsubstantial and ideal kind, as lands, houses, offices, rents, commons, advowsons, franchises, &c. Tenement.

A messuage however, if named alone in the præcipe will not it is said pass by the word tenement in the concord; see Hands on Fines, p. 164, sed quære.

(5) The moiety or other part of the entirety must be particularly named in the concord. Moiety must be mentioned.

(6) If there be several cognizees, say,

"To be the right of the said *Richard* (i. e. one only of the cognizors), as those which the said *Richard* and *James* have of the gift," &c. Several cognizees.

FINE.

Come ceo
(*concord*).

which the said *Richard* hath of the gift (1) of the said *John* (2), and those which he (3) hath remised and quit claimed for himself the said *John* and his heirs, to the aforesaid *Richard* (4) and his heirs for ever (5). AND moreover the said *John* hath (6) granted

A fine come ceo, as an acknowledging of a former conveyance.

(1) A fine *sur cognizance de droit come ceo*, &c. proceeds upon the supposition that the defendant in order to keep his covenant with the plaintiff of conveying to him the land in question, and at the same time to avoid the expense of an actual feoffment and livery, acknowledged in court a former feoffment or gift in possession to have been made by him to the plaintiff; the fine is therefore sometimes called a feoffment upon record, the livery thus acknowledged in court being equipotent to an actual livery; so that this assurance is rather a confession of a former conveyance than of a conveyance now originally made, for the deforçant or cognizor acknowledges the right to be in the plaintiff or cognizee, as that which he has of the proper gift of himself the cognizor; see 2 Blac. Com. p. 352.

Husband and wife.

(2) If the fine be levied by husband and wife, say,

"Of the gift of the said *John* and *Mary*."

Several cognizors.

If by several cognizors, say,

"Of the gift of the said *John*, *Thomas*, and *William*."

Husband and wife.

(3) If the fine be levied by husband and wife, say,

"And those they have remised and quitted claim from them the said *John* and *Mary* and their heirs, to the aforesaid," &c.

Several cognizors.

If by several cognizors, say,

"From them the said *John*, *Thomas*, and *William*, and their heirs, to the aforesaid," &c.

Several cognizees.

(4) If there be several cognizees, say,

"To the aforesaid *Richard* and *James*, and the heirs of the said *Richard* (i. e. *one only of the cognizees*), for ever."

No words of limitation necessary in a fine come ceo.

(5) No words of limitation are necessary in a fine *sur cognizance de droit come ceo*; but if added they will have the effect of the intention they express, Co. Lit. 9. For although a fine *come ceo* generally implies a fee simple, yet it is only by implication, and therefore there is no repugnancy to limit an estate for life to the cognizee; for the supposed precedent feoffment, or gift in possession, might have been for life only or in tail, and the general intendment of the cognizance or acknowledgement may be qualified by an express limitation; see *Hunt v. Bourne*, 1 Salk. 340, and *supra*, n. (1).

Man and wife. Estate of the husband.

(6) If the fine be levied by a man and his wife of estates the property of the husband, say,

"AND moreover the said *John* and *Mary* have granted for themselves and the heirs of the said *John*, that they will warrant to the aforesaid *Richard* and his heirs, the aforesaid tenements with the appurtenances, against them the said *John* and *Mary*, and the heirs of the said *John* for ever."

for himself and his heirs, that he will warrant (1) to the aforesaid *Richard* (2) and his heirs, the aforesaid forest, chase, park, manors, tenements, mines, quarries, rent, commons, liberties, franchises, rectories, prebend, and moiety and part, against him the said *John* (3) and his heirs for ever. And for this, &c. (4).

(*cognizor or cognizors*).

Taken and acknowledged at
 this day of
 in the year of King
 George the before us

FINE.

*Come ceo
 (concord).*

If it be the estate of the wife, say,

“AND moreover the said *John* and *Mary* have granted for themselves and the heirs of the said *Mary*, that they will warrant to the aforesaid *Richard* and his heirs, the aforesaid tenements with the appurtenances, against them the said *John* and *Mary*, and the heirs of the said *Mary* for ever.”

Man and wife.
 Estate of the
 wife.

If the fine be levied by several cognizors, say,

“AND moreover the said *John*, *Thomas*, and *William*, have granted for themselves and the heirs of the said *John* (i. e. *one only of the cognizors*), that they will warrant to the aforesaid *Richard* and his heirs, the aforesaid tenements with the appurtenances, against them the said *John*, *Thomas*, and *William*, and the heirs of the said *John* for ever.”

Several cogni-
 zors.

Or each of the several cognizors may, as a further precaution, enter into a separate warranty of the land against himself and his heirs; the form of each of these separate warranties will be the same as that given in the text. The general rule is, where there are several cognizors, that the warranty should be against that person and his heirs, in whom the fee is; but if this be uncertain it is usual for them to enter into separate warranties.

Separate war-
 ranty.

(1) A fine will be good without a warranty; but the intent of the fine being to prevent any further controversy between the parties, and confirm the estate to the cognizee, a warranty is usually added for that purpose.

Warranty not
 essential.

(2) If there be several cognizees, say,

Several cogni-
 zees.

“To the aforesaid *Richard* and *James*, and the heirs of the said *Richard* (i. e. *one only of the cognizees*).”

If however the cognizees be heirs in gavelkind the warranty may be,

Gavelkind.

“To the aforesaid *Richard* and *James* and their heirs.”

(3) Sometimes the warranty is made to extend to the father and grandfather of the cognizor, in which case add,

Extension of
 warranty.

“AND against the heirs of (*the father*) deceased, father of the said *John*, and against the heirs of (*the grandfather*) deceased, grandfather of the said *John*, and against all others claiming or to claim by, from, or under the said *John*, (*father*), and (*grandfather*), or either of them.”

(4) This means, “and for this acknowledgement, remise, quit, claim,

FINE.Come ceo
(concord).Several cogni-
zors.

warranty, fine, and agreement, the cognizee hath given unto the cognizor £ sterling"; the sum so inserted is merely a nominal sum, which the chirographer's clerk inserts in the indentures as a matter of form; its amount is governed by the fine set by the commissioners at the Alienation Office.

If there be several cognizors they must all acknowledge and sign under one concord, and on the same piece of parchment; see *Batch v. Phelps*, 3 Bos. and Pul. 336.

Fine come ceo a
revocation of a
will previously
made.

. Although a fine *sur cognizance de droit come ceo*, &c. is generally a total revocation of a previous devise of the same estate, and therefore requires that the testator should republish his will, 3 P. Wms. 170, note; and a fine *sur concessit*, a revocation *pro tanto*, 8 Vin. Ab. 196, pl. 10; yet this will not be the case of a fine levied by tenants in common, on a partition, if no further alteration be made in the estate than a severance between them; *Swift v. Roberts*, 3 Burr. 1490; *Luther v. Kidby*, 3 P. Wms. 169, n.; *Risley v. Lady Baltinglass*, Sir T. Raym. 240.

FINE.

Tantum
 (reversion).

No. CCCL.

A Fine sur cognizance de droit tantum (1) *by a man and his wife, passing an Estate in Reversion, in lands the inheritance of the Wife.*

Variations where there are several cognizees.

PRÆCIPUE.

Yorkshire } COMMAND *John Stiles, Esquire, (the deforçant, or To wit. } cognizor), and Mary his wife, that justly, and without delay, they perform to Richard Baker, gentleman, (the plaintiff, or cognizee), the covenant made between them of, &c. (the particulars) (2) and unless, &c. (3)*

CONCORD.

AND the agreement is such, to wit that the aforesaid *John* (4) and *Mary* have acknowledged the aforesaid tenements (5), with the appurtenances, to be the right of him the said *Richard* (6), and have

(1) *A fine sur cognizance de droit tantum*, is an acknowledgment of the right merely of the cognizee, without the circumstance of any preceding gift from the cognizor (see *ante*, p. 501, n. (1).) and is used therefore to pass an interest in remainder or reversion, of which there can have been no feoffment, or donation with livery, as the possession belongs to the tenant of the particular estate. A fine tantum.

(2) See *ante*, p. 503, where these particulars are set out at length.

Description of parcels.

(3) See *ante*; p. 506, n. (5).

(4) See *ante*, p. 507, n. (1).

(5) See *ibid.* n. (4).

(6) If there be several cognizees, say,

Several cognizees.

"To be the right of the said *Richard*, (*i. e. only one of the cognizees*).

FINIS.Tantum
(reversion).

granted that the aforesaid tenements, with the appurtenances, which (*the tenant for life*) on the day this agreement is made, holds for the term of his life of the inheritance of the said *Mary*, and which, after the decease of the said (*tenant for life*), ought to revert to the said *Mary* and her heirs, shall, after the decease of the said (*tenant for life*), entirely remain to the said *Richard* (1) and his heirs for ever. AND the aforesaid *John* and *Mary* have granted for themselves and the heirs of the said *Mary*, that they will warrant (2) to the said *Richard* (3) and his heirs, the aforesaid tenements, with the appurtenances, in such manner as is aforesaid against them (4) the said *John* and *Mary*, and the heirs of the said *Mary* for ever. AND for this, &c. (5)

Taken, &c.

Several cogni-
zors.

(1) If there be several cognizors, say,
"To the said *Richard* and *James*, and the heirs of the said *Richard* for ever."

Several cogni-
zees.

(2) See *ante*, p. 509, n. (1) and (2).
(3) If there be several cognizees, say,
"Will warrant to the said *Richard* and *James*, and the heirs of the said *Richard*."

Extension of
warranty.

(4) If the warranty be made to extend to the father, or grandfather of the cognizor, see *ante*, p. 509, n. (3).
(5) See *ante*, p. 509, n. (4).

FINE.

Sur concessit
 (for life).

No. CCCLI.

A Fine sur concessit (1) by a man and his wife, passing an Estate for Life, in Lands the Inheritance of the Husband.

Variations where it is the Inheritance of the wife. Where the husband and wife have an Estate for life only. Where there are several cognizors. Where there are several cognizees. Where it is for years.

 PRÆCIPE.

Yorkshire } COMMAND *John Stiles, Esquire (the deforceant, or To wit. } cognizor), and Mary his wife, that justly, and without delay, they perform, to Richard Baker, gentleman (the plaintiff, or cognizee), the covenant made between them of (the particulars) (2), and unless, &c. (3)*

CONCORD.

AND the agreement is such, to wit, that the aforesaid *John* (4) and

(1) A fine *sur concessit* may be levied, and will be proper when the intention is to pass a particular estate, and a reversion in fee; *Ludlow v. Drummond*, 2 Taunt. 84; and the Court will allow a fine *concessit* for conveying a life estate, and a fine *tantum* for conveying a reversionary interest in the same premises, to pass as one and the same fine, *Prideaux v. Gilford*, 1 Marsh, 422. The only difference between a fine *sur concessit*, and a fine *tantum* is, that by the former, the deforceant is supposed to have granted the estate; whilst by the latter, he acknowledges the right to be already in the cognizee. See 1 Marsh, 423. This fine may also be used for passing a term of years, see *post.* p. 516.

Fine sur concessit.

(2) For the different species of property, of which a fine may be levied, and the manner in which the parcels are to be set out, see *ante*, p. 504.

Description of the parcels.

(3) See *ante*, p. 506, n. (5).

(4) See *ante*, p. 507, n. (1).

FINE.

Sur concessit
(for life).

Mary (1) have granted (2) to the aforesaid *Richard* (3) the aforesaid tenements (4) with the appurtenances, To HAVE AND TO HOLD the same tenements, with the appurtenances, unto the said *Richard*, during the life (5) of the said *John*, [or as the case may be]. AND moreover, the said *John* (6) and *Mary* have granted for themselves (7) and the heirs of the said *John* (8), that they will warrant (9)

Several cogni-
zors.

(1) If there be several cognizors, say,

"The aforesaid *John*, *Thomas*, and *William*, have granted, &c.

Nature of a fine
sur concessit.

(2) A fine *sur concessit* proceeds upon the supposition that the cognizor, in order to put an end to the dispute, although he acknowledges no precedent right, yet grants to the cognizee an estate *de novo*, usually for life, or for years, by way of a supposed composition, and upon which may be reserved a rent, or the like, as in other grants for life or years.

Several cogni-
zees.

(3) If there be several cognizees, say,

"Have granted to the aforesaid *Richard* and *James*, the aforesaid tenements, with the appurtenances, To HAVE AND TO HOLD the same tenements, with the appurtenances, unto the said *Richard* and *James*, and the heirs of the said *Richard*, during the life, &c.

(4) See *ante*, p. 508, n. (4) and n. (5).

Words of limita-
tion necessary
in a fine sur
concessit.

(5) In fines *sur concessit*, words of limitation defining the period for which the grant is to continue, are necessary; for a grant by fine, will, without express words, pass no more than an estate for the life of the cognizee; this fine not presupposing a feoffment, as in the case of a fine *come ceo*, see *ante*, p. 508, n. (1), but only a grant for an indefinite period.

The estate
granted must be
expressed with
certainty in con-
cessit fine.

A fine must express with certainty the estate which it purports to grant, as to the conusee in fee, for life, or for years. The Court would not, therefore, in a late case, permit a fine *concessit* to be levied for the purpose of passing such estate as the party might have (it being dubious what estate he had) by the description of, "for, and during all the term and other estates, and all and whatsoever else he had." See *Seymour v. Barker*, 2 Taunt. 198.

Several cogni-
zors.

(6) If there be several cognizors, say,

"AND moreover the said *John*, *Thomas*, and *William*, have granted for themselves and the heirs of the said *John*, &c."

Life estate.

(7) If the cognizor and his wife have an estate for life only, under a marriage settlement or will, say,

"AND moreover the said *John* and *Mary* have granted for themselves, that they will warrant, &c."

Wife's inheri-
tance.

(8) If the estate be the inheritance of the wife, say,

"For themselves and the heirs of the said *Mary*."

(9) See *ante*, p. 509, n. (1).

to the aforesaid *Richard* (1) the aforesaid tenements, with the appurtenances, in such manner as is aforesaid against them the said *John* and *Mary*, during the life of the said *John*. AND for this, &c. (2).
Taken, &c.

FINE.

Sur concessit
(for life).

(1) If there be several cognizees, say,
"Will warrant to the aforesaid *Richard* and *James*, and the heirs
of the said *Richard*."

Several cogni-
zees.

(2) See *ante*, p. 509, n. (4).

FINE.

Sur concessit
(for years).

No. CCCLII.

A Fine Sur concessit by a Man and his Wife passing an Estate for years, in Land, the Inheritance (1) of the Husband.

Variations where it is the Inheritance of the wife. Where there are several cognizors. Where there are several cognizees.

PRÆCIPE.

Yorkshire } *COMMAND John Stiles, Esquire, (the deforceant or To wit. } cognizor), and Mary his wife, that justly, and without delay, they perform to Richard Baker, gentleman, (the plaintiff or cognizee), the covenant made between them of (the particulars) (2), and unless, &c. (3)*

CONCORD.

AND the agreement is such, to wit, that the aforesaid *John* (4) and *Mary* (5) have granted (6) to the aforesaid *Richard* (7) the afore-

Description of
parcels.

Several cogni-
zors.

Several cogni-
zees.

(1) If the estate of the husband be for years only, whether in his own right or right of his wife, no fine is requisite to pass it, as the husband has an absolute power of disposition over his chattel interests even though coming from the wife.

(2) For the different species of property of which a fine may be levied, and the manner in which they are to be described, see *ante*, pp. 504. 506.

(3) See *ante*, p. 506, n. (5).

(4) See *ante*, p. 507, n. (1).

(5) If there be several cognizors, say,

“The aforesaid *John, Thomas and William*, have granted, &c.”

(6) See *ante*, p. 514, n. (2).

(7) If there be several cognizees, say,

“Have granted to the aforesaid *Richard and James*, the aforesaid tenements, with the appurtenances, TO HAVE AND TO HOLD the same tenements, with the appurtenances, unto the said *Richard and James*, from, &c.

said tenements (1), with the appurtenances, To HAVE AND TO HOLD the same tenements, with the appurtenances, unto the said *Richard*, from the day of , last past, for and during, and until the full end and term of years, from thence next ensuing, and fully to be complete and ended, rendering therefore yearly to the aforesaid *John* and *Mary*, and the heirs of the said *John* (2), one peppercorn, at the Feast of St. Michael the Archangel, during the said term, if demanded. AND the aforesaid *John* and *Mary* (3) have granted for themselves and the heirs of the said *John* (4), that they will warrant to the aforesaid *Richard* (5) the aforesaid tenements, with the appurtenances, against them the said *John* and *Mary*, and the heirs of the said *John* (6) during the term aforesaid. AND for this, &c. (7)

Taken, &c.

FIVE.

Sur concessit
(for years).

(1) See *ante*, p. 507, n. (4).

(2) If it be the estate of the wife, say,

“And the heirs of the said *Mary*.”

(3) If there be several cognizors, say,

“AND moreover, the said *John*, *Thomas* and *William*, have granted for themselves and the heirs of the said *John*, that they will warrant to the aforesaid *Richard*, the aforesaid tenements, with the appurtenances, against them the said *John*, *Thomas* and *William*, and the heirs of the said *John*, during the term aforesaid.”

(4) If it be the wife's estate, say,

“And the heirs of the said *Mary*.”

(5) If there be several cognizees, say,

“To the aforesaid *Richard* and *James*.”

(6) If it be the wife's estate, say,

“And the heirs of the said *Mary*.”

(7) See *ante*, p. 509, n. (4).

Wife's estate.

Several cogni-
zors.

Wife's estate.

Several cogni-
zees.

Wife's estate.

FRIENDLY SOCIETIES.

It has been found more convenient to insert the acts intended to be introduced here relative to FRIENDLY SOCIETIES in a subsequent part of the work, see post. Vol. III. "SOCIETIES:"

GIFT.

Benefice.

No. CCCLIII.

A Gift of a Benefice or Living (1).

TO ALL CHRISTIAN PEOPLE TO WHOM THESE PRESENTS SHALL COME, I (*the patron*) of, &c. send greeting. WHEREAS the church of _____, in the county of _____, is now void by the natural death of A. B. clerk, the last incumbent thereof, and doth of right belong to my gift or donation. Now KNOW YE, that I the said (*patron*) do hereby give and grant (2) unto my beloved in Christ

(1) See *post*. Vol. III. "PRESENTATION."

Nature of a
donative.

A donative is a spiritual preferment, be it church, chapel, or vicarage, which is in the free gift of the patron, who may, by his sole act or deed of donation, vest the church absolutely in the clerk, without the necessity of his being either presented to the ordinary, or instituted, or inducted by him; *Powell v. Milburn*, 3 Wils. 355; 2 Black. Comm. 23. In this case, the church is exempt from every kind of jurisdiction of the ordinary, which is transferred to the patron, who has not only power by his commissioners appointed for that purpose to visit the church, but to him, and not to the ordinary, the clerk must prefer his resignation; *Co. Lit.* 344. a.

Patron waiving
his privilege of
donation, by
presenting to
the ordinary, the
advowson it is
said becomes
presentative.

(2) It is necessary in disposing of a living, to attend to the distinction between a presentative and donative advowson, and to frame the deed of gift accordingly; because it has been said, that if the patron of a donative advowson once waive his privilege of donation by presenting to the ordinary, the advowson will cease to be donative, and become presentative; *Co. Lit.* 344. a. *Fairchild v. Gayre*, Cro. Jac. 63; 2 Blac. Comm. 23; for as "these exceptions to general rules and common right are always looked upon in an unfavourable view, and construed as strictly as possible," if the patron in whom such peculiar right resides, once gives up that right, the law, for uniformity's sake, will interpret it to be done with an intention of entirely relinquishing it, and reduces it therefore to the standard of other ecclesiastical livings; 2 Blac. Comm. 23. But this doctrine seems to have been denied in the case of *Lidd v. Widdows*, 1 Salk. 541, in which it was holden, that though a presentation may destroy an impropriation, yet it cannot destroy a donative, the creation of a donative being always by letters patent.

C. D. clerk (1) the aforesaid church of _____, with all and every the rights and appurtenances to the same belonging, and by these presents do induct (2) him the said C. D. into the corporal possession of the said church, with its rights and appurtenances, as aforesaid. IN WITNESS whereof I have hereunto set my hand and seal this _____ day of _____, in the year of our Lord Christ

GIFT.

Benefice.

(1) It is necessary, in the case of a donative, that the donee should be in priest's orders, for by the 13 and 14 Car. 2. c. 4. s. 14, no person is capable of being admitted to any parsonage, vicarage, benefice, or other ecclesiastical promotion or benefice whatsoever, before such time as he shall have been ordained a priest, according to the form and in the manner prescribed by the Book of Common Prayer; and see also *Hill v. Barne*, 2 Levinz. 250. *Sir T. Jones*, 192. S. C.

Donee must be
in priest's or-
ders.

(2) In order to give the incumbent complete possession of his benefice, where it is a *presentative* benefice it is necessary that he should be instituted and inducted by the bishop; but, in the case of a *donative*, this is superfluous, the donee being by force of the deed of donation in the actual and complete possession of the benefice to all intents and purposes, without being either instituted or inducted by the patron himself, or any other person whomsoever; and may immediately thereupon maintain an action for the rents and profits; the *King v. Bishop of Chester*, 1 Durnf. and E. 403; *Quarles v. Fayrchild*, Cro. Eliz. 653; *Powell v. Milburn*, 3 Wils. 355.

Induction not
necessary in a
donative.

GIFT.

Land.

No. CCCLIV.

A Deed of Gift of Land
(by Deed-poll (1).)

The donor in consideration, &c. gives and grants.

KNOW ALL MEN BY THESE PRESENTS, that I, (*the donor*) of, for, and in consideration of the esteem and regard which I have (*the donee*), of, &c. HAVE given and granted, and by these

A deed of gift void as against subsequent purchasers.

(1) See *ante*, p. 292, n. (1), as to Deed-poll.

A deed of gift is generally considered as a conveyance of *estate tail*, in corporeal hereditaments, to another without any good valuable consideration, in contradistinction to the conveyance of estate in fee simple by feoffment, and an estate for life, or years, or lease, see Lit. s. 57; Shep. Touch. 227; and in incorporeal property by grant; or to either of these assurances, for a valuable consideration; and when used for that purpose, has the same operation, and must be attended with the same ceremony of livery as a deed of feoffment, Lit. s. 59. But it being like all voluntary conveyances, void as against subsequent purchasers for money or other valuable consideration, by the statute of 23 Eliz. c. 4; see *Townsend v. Windham*, 2 Ves. 10; even although the previous conveyance were for a fair and reasonable settlement on a wife and children after marriage, and although the purchaser had notice of the settlement; *Pulvertoft v. Pulvertoft*, 18 Ves. 85; and, that, though the sale rest only in contract; *Buckle v. Mitchell*, ib. 100, (that statute, by the construction which it has received, making the fraudulency of a conveyance absolutely dependent upon its having or not having been made for a valuable, or at least, a meritorious consideration, 1 Ch. Ca. 100, 216; *Doe dem. Otley v. Manning*, 9 East, 163; and which must be a *bonâ fide*, and not a colourable consideration only, *Doe dem. Parry v. James*, 16 East, 212;) it is now very seldom had recourse to. But it will, nevertheless, be binding upon the party himself, *Villers v. Beaumont*, 1 Vern. 100; *Bale v. Newton*, ib. 464; *Pulvertoft v. Pulvertoft*, 18 Ves. 85; and unless it is said the gift be by a client to his attorney, see *Wills v. Middleton*, 1 Cor. 112; and all claiming under him, except purchasers for a valuable consideration, *Townsend v. Windham*, 2 Ves. 10; and also be good against all creditors who were not such at the time of the gift, *Kidney v. Coussmaker*, 12 Ves. 155; or where made upon a wife or children, if before marriage, even though of moveables, and without an inventory, and even though the husband was indebted at the time of the settlement, *Lewis v. Madock*, 17 Ves. 48; or though made by a brother, uncle, or other

to freely and absolutely give and grant unto the said (*donee*), his heirs, ALL, &c. or howsoever otherwise the said messuages, tenements and hereditaments, or any of them, now are, or before were, or was situated, tenanted, called, known, distinguished. Together with all and all manner of rights, advantages, appendages and appurtenances to the same or any of them belonging; or with the same, or by or heretofore holden, used, occupied, or enjoyed; together with the right, title, interest, property, claim and demand in and to the same at law and in equity, in or to the same premises, or any part thereof. TO HAVE AND TO HOLD the same lands, tenements, hereditaments, and all and singular premises hereinbefore given and granted, or mentioned unto so to be, unto him the said (*donee*), his heirs and assigns forever and for the only use, behoof, and benefit of him the said (*donee*) his heirs and assigns, for ever (1). IN WITNESS, &c.

GIFT.

Land.

The parcels.

TO HOLD to the donee, his heirs and assigns for ever.

of the party, *Pulvertoft v. Pulvertoft*, 18 Ves. 92; and it may be made serviceable on particular occasions (in addition to the cases mentioned above), as to qualify a person to be a member of parliament, to vote at an election, to kill game, or the like; it has therefore been held that a man has a right to give the form of such an assurance, see also *ante*, "COVENANT," p. 420.

(1) A Warranty is generally inserted in Deeds of Gift, but where it is a voluntary donation without regard to any return by way of a life annuity or otherwise, it seems unreasonable that the donor should onerate his representatives with the liability consequent upon a warranty.

Warranty.

* * The same formality of livery of seisin where the instrument is by a Deed of Gift is requisite in this case, as in a deed of feoffment; and a memorandum of such livery having been made must be indorsed on the deed. The form of this memorandum will be found, *ante*, p. 499. But it may be made by lease and release, or other assurance adapted to the passing of the subject of the Gift, and if it be made to a near relation it may be by covenant to stand seised, of which see *ante*, p. 420.

Livery of seisin necessary.

GIFT.

Personalty.

No. CCCLV.

A Deed of Gift of Leasehold and Personal Property (1).

* *Variations* where a life annuity is to be paid to the Donor in consideration of the Gift.

The donor
gives and as-
signs

The leasehold
property,

and the person-
alty.

KNOW ALL MEN BY THESE PRESENTS, that I (*the donor*) of, &c. for and in consideration of the love (2) and affection [*or esteem and regard*] which I have for (*the donee*) of, &c. HAVE given and granted and by these presents Do freely, absolutely, and irrevocably give, grant, and assign unto the said (*donee*), his executors, administrators, and assigns, ALL that messuage or tenement, &c. (3) and other the premises comprised in and demised by a certain indenture of lease bearing date the day of , and made between (*the lessor*) of, &c. of the one part, and (*the lessee*) of, &c. of the other part; together with all and singular the rights, members, and appurtenances to the same belonging or in anywise appertaining or incident, and also the said indenture of demise or lease, and all mesne assignments (if any) thereof, and also ALL and every the goods and

Gift of person-
alty in effect a
voluntary as-
signment.

"Love and af-
fection" not re-
quisite in gift
of personalty.

(1) Being desirous of giving the form of every species of assurance which may be sought for under every ordinary circumstance, I have been induced to insert that of a gift of chattel and personal interests; but it is at the same time to be observed that its operation will in no respect differ from a voluntary *assignment*, which will in every case be equally effective; some written instrument however, or an actual delivery of the thing given is essential to its efficacy; and see 2 Bar. and Ald. 551.

(2) The student is not to be misled by the insertion of these words, to imagine that they are requisite to vest the property in the donee, as in the case of a gift of realty by covenant to stand seised (see *ante*, p. 420, n. (2)); they being in the gift of personalty, perfectly nugatory, and are introduced merely for form sake and by way of showing some motive for the donation.

(3) Insert here a description of the premises the subject of the gift.

chattels, household and other furniture and effects, in or upon (1) the said messuage or tenement and dwelling-house hereinbefore described, of which said last mentioned goods, chattels, and effects, possession (2) is intended to be delivered to the said (*donee*), at or immediately after the execution of these presents; and all my estate, right, title, interest, possession, property, claim, and demand whatsoever, both at law and in equity, of, in, or to the same messuage or tenement and dwelling-house and household furniture respectively, TO HAVE AND TO HOLD the said messuage or tenement and dwelling-house with the appurtenances unto the said (*donee*), his executors, administrators, and assigns, for the residue and remainder of the term of years now to come therein under or by virtue of the said indenture of lease, subject only to the payment of the rent and to the performance and observance of the covenants therein reserved and contained, which on the tenant's part are thereby required to be paid, observed, or performed; and TO HAVE AND TO HOLD and take and enjoy the said household and other furniture, goods, chattels, and effects, unto and by the said (*donee*), his executors, administrators, and assigns, absolutely to and for his and their own proper use and benefit. *AND KNOW YE FURTHER, that in consideration of the natural love and affection aforesaid and to the end and intent to vest the absolute property of the sum of £ [or the said Bank Annuities, &c. *as the case may be*] in him the said (*donee*); I the said (*donor*) have given and granted, and by these presents Do for

GIFT.

Personally.

TO HOLD the leasehold for the residue of the term.

TO HOLD the personality absolutely.

FURTHER
WITNESS.
Gift of money.

(1) It may sometimes be proper that the furniture, &c. should be particularly specified in a voluntary donation, either in the deed itself or by a schedule annexed, in order that no question may afterwards arise as to the identity of the things intended to be given, and in order to prove that possession was delivered of them, which it has been before observed is requisite to complete the transfer of articles of personal property. If therefore it be considered necessary to schedule the furniture, say,

“And also all and every the household furniture, beds, bedding, plate, china, linen, glass, books, pictures, and all and singular other the goods, chattels, and effects, mentioned or described in or by the inventory or schedule thereof hereunder written or hereunto annexed.”

(2) Delivery of possession is alone sufficient to pass a property merely personal; however, it is proper that some evidence should be had of this having been done; and this is the more necessary in *voluntary* assignments, which are construed with all allowable strictness against the grantee, in favor of a subsequent claimant for a valuable consideration.

In an assignment of furniture it should be scheduled.

Voluntary assignments construed strictly against the grantee.

GIFT.

Personality.

myself, my executors, and administrators, give, grant, assign, and confirm unto the said (*donee*), his executors, administrators, and assigns, the said sum of £ [or per cent. Bank Annuities] and every part thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of me the said (*donor*), both at law and in equity, of, into, or out of the same £ , and every or any part thereof, To HAVE, HOLD, receive, take, and enjoy, the said sum of £ [or per cent. Bank Annuities] hereby given and granted, or otherwise assured or intended so to be, unto him the said (*donee*), his executors, administrators, and assigns, from henceforth absolutely and for ever to and for his and their own use and benefit (1).
IN WITNESS, &c.

Annuity reserved to donor.

*(1) If an annuity is to be paid to the donor, the deed should be by indenture and framed in the third person, and add,

"AND THIS INDENTURE FURTHER WITNESSETH, that the said (*donee*) in consideration of the premises aforesaid doth hereby for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree to and with the said (*donor*), his executors, administrators, and assigns, that he the said (*donee*), his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said (*donor*) and his assigns, for and during the term of his natural life, one annuity or yearly sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, free and clear of and from all taxes, charges, abatements, and deductions whatsoever, parliamentary or otherwise, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, yearly and every year, at or upon the four most usual feasts or days of payment in the year, that is to say, &c. by even and equal proportions, the first payment thereof to begin and be made upon the day of next ensuing the date hereof."

In which case a warranty may be added, as,

"AND the said messuages or tenement and dwelling-house, and all and singular the household and other furniture hereby given unto the said (*donee*), or intended so to be, I the said (*donor*) for myself, my heirs, executors, and administrators, shall and will warrant and defend unto the said (*donee*), his executors, administrators, and assigns, against all persons whomsoever."

Indemnity against covenants in the lease.

If the donor wish to be indemnified against the payment of the rent and the performance of the covenants of the lease, the donee may enter into a bond or a deed of covenant for that purpose. The form of the

bond will be found *ante*, p. 186, and the deed of covenant, *post*. p. 569 ; or may enter into such covenant in the deed of gift, making it by indenture instead of deed-poll.

GIFT.

Personalty.

* * If the gift be of articles of furniture, trinkets, or other things capable of manual delivery, such delivery should be made to the donee in order to validate the gift ; and when the gift is not evidenced by witness, this is essential ; see *Friens v. Smallpeace*, 2 Bar. and Ald. 551. Delivery.

GIFT.

Charity.

No. CCCLVI.

**A Deed of Gift for the Establishment or Endowment of a Charity (1).*

THIS INDENTURE made the day of in the
year of the reign, &c., and in the year of our Lord 18 , BE-
TWEEN (*the donor*) of, &c. of the one part, and (*trustees*) trustees
appointed for the purposes hereinafter mentioned, of the other part.
WHEREAS the said (*donor*) is desirous and intends to found and es-
tablish a charity school, [or as the case may be] in the parish of
 in the said county of , for the educating and in-
structing of ~~poor~~ children born within the said parish ,
in the religion of the Church of England, and to read, write and
cast accounts, and other proper and useful learning for the poorer
class of people, and of settling and assuring the lands and heredita-
ments hereinafter described, for the purpose of founding and establish-
ing the same. NOW THIS INDENTURE WITNESSETH, that in further-
ance and execution of the desire and intention aforesaid [and also in
consideration of the sum of 10s. of lawful current money of England
to the said (*donor*) in hand well and truly paid by the said (*trustees*)
at or before the sealing and delivery of these presents, the receipt
whereof is hereby acknowledged,] he the said (*donor*) HATH given
and granted and bargained, sold, aliened, and released, and by these
presents DOTH freely and absolutely give and grant (2), and bargain,
sell, alien and release unto the said (*trustees*) and their heirs, ALL,
&c. and all and every rights, members, privileges, advantages, ease-

Recitals.

WITNESS.
Donor grants to
trustees.

Parcels.

Charities.

(1) The law relative to charitable uses under the statute of 43 Eliz. c. 4, and 9 Geo. 2. c. 36. is by much too diffuse, and attended with too many nice distinctions to be comprehended within the compass of a note, nor would it indeed be suited to the nature of the present Work; an outline has however been attempted in the Elem. Conveyancing, Vol. III. p. 587. 2nd Ed.

Rent-charge.

(2) If the gift be of a rent-charge, see *post*. Rider A. p. 531.

GIFT.

Charity.

ments, appendants and appurtenances to the same hereditaments and premises or any part thereof belonging or in anywise appertaining, (all which said hereditaments are now in the actual possession of the said (*trustees*) by virtue of a bargain and sale to them thereof made by him the said (*donor*) for one year in consideration of 5s. by an indenture bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession;) and all and every reversion and reversions, remainder and remainders, of and in the same, and all and singular the rents, issues and profits thereof, and all and every the estate, right, title and interest whatsoever of him the said (*donor*) of, in and to the same, To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereinbefore given and granted or otherwise assured or intended so to be unto and by the said (*trustees*) and their heirs, to the use and behoof of them the said trustees, their heirs and assigns for ever; but nevertheless upon the trusts and to and for the ends, intents and purposes hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST (1), that they the said (*trustees*) and the survivors and survivor of them, and the heirs of the last survivor, and their and his assigns or successors, under or by virtue of the trusts, powers or provisions hereinafter contained, do and shall pay, apply and dispose of the rents, issues and profits of all and singular the said hereditaments when and as they shall be received, or so far as the same will extend, in or for the maintenance of a free-school in the said parish of for the teaching of poor boys, and poor girls born within or belonging to the said parish; the said boys to be taught to read and write and cast accounts, and the girls to read and write, and sew, knit, mend and make, and the said children to be instructed in such other learning or knowledge as shall be thought useful and proper for their situations in life, without any fee or reward for the same, and in trust to pay and allow to a master and a mistress of the said school, such salaries or yearly sums as they the said (*trustees*) or the major part of them shall from time to time think fit and sufficient; and the said (*donor*) hath constituted and appointed and hereby doth constitute and appoint and his wife to be schoolmaster and mistress of the said school, for so long a time as in the opinion of the

To HOLD

UPON TRUST to
apply the rents,
&c. in instruct-
ing children,and salary to
master and
mistress.Appointment of
master and mis-
tress.

(1) If the object of the gift be for the support of a religious sect, see *Dissenters post. Rider B. p. 532.*

GIFT.
Charity.

Master, &c. not
to receive gra-
tuities.

But may take
pay scholars.

Children to be
parishioners.

Trustees to
examine the
children, &c.
once a year.

Trustees may
remove master,
&c.

Names of
children to be
registered.

said (*donor*), during his life, and of the trustees for the time being for the said school, after his decease, he and she shall respectively conduct himself and herself well and becomingly. AND that the said schoolmaster and mistress for the time being shall not receive any money or other present from the parents or relations of the said children, either at their entrance or breaking up, or at any other time, or upon any other account whatsoever, but shall content themselves with the salaries, reward and encouragement paid or allowed to them by the said trustees for the time being; PROVIDED ALWAYS, that the said schoolmaster and mistress shall respectively be at liberty to take any other scholars into the said school, not exceeding boys and girls in number (besides the said poor children), and to take such salaries or rewards for teaching them as they shall respectively think fit. AND the said (*donor*) doth hereby further order, direct and appoint that the said poor children shall be from time to time chosen and elected out of the natives (if it can so be), and if not out of the inhabitants of the said parish of , or other the next adjacent parishes (but the children of the said parish of being always preferred and taken into the said school, if qualified, before the children of any such adjoining parish); and that none of such poor children being boys shall be admitted into the said school before the age of years, and being girls before the age of years, nor shall the boys continue at the said school after the age of years, nor the said girls after the age of years: AND the said (*donor*) doth hereby further direct that the trustees of the said charity for the time being, or as many of them as conveniently can, shall once in every year meet at the school-house where the said charity-school shall be kept, to examine the proficiency of the children there, and into any neglects, miscarriages or irregularities which there may be of or in the said schoolmaster and mistress for the time being, or their management of the said children, or in the conduct or behaviour of such children, and to make such reasonable by-laws and ordinances as to them shall seem meet for the better management and promoting of the said charity, and the design and ends thereof. AND IT IS HEREBY FURTHER ORDERED AND DECLARED by the said (*donor*) that it shall be lawful for the major part of the trustees of the said charity for the time being, for any gross offence, miscarriage, irregularity or neglect, to deprive and remove, or to suspend the schoolmaster and mistress of the said school for the time being, or either of them, or to expel any of the said poor children. AND it is hereby further ordered, directed and appointed that a book shall be carefully

kept by the master of the said school for the time being, wherein shall be entered the names of every of the said poor children, together with the times when they were respectively chosen and taken into the said school, and their respective ages, and likewise the names of such of the said children as shall be removed or sent from or who shall depart from the said school, and their respective ages at the time of such removal or departure; and wherein also or in some other book shall be entered minutes of all rules and regulations which the said trustees shall make at their said yearly meeting, or at any other time or times, touching the said school, and also all other acts which shall be done by the said trustees for the time being or any of them in relation to the said school, which said book or books shall be always ready to be produced and shown unto the said trustees for the time being whenever reasonably required in that behalf. AND to the intent that there may be at all times a competent number and perpetual succession of fit persons for ever to act in the management and government of the said charity according to the true intent and meaning hereof, the said (*donor*) DOth hereby further order, direct and appoint that when and as often as the number of trustees for the time being shall be reduced by death or otherwise to the number of it shall, &c. [*power of filling-up trustees*] (1). PROVIDED ALWAYS, and it is hereby further agreed and declared, that it shall and may be lawful to and for the said (*donor*) at any time or times, by any writing under his hand and seal (and attested by two or more witnesses), to make any further or other orders and directions for the better management of the said charity, and to alter, add to or revoke any of the orders hereby made and appointed by him relating to the same PROVIDED ALWAYS, that in case the yearly rents and profits of the said hereditaments shall prove deficient (with the contributions, if any, of other well disposed charitable persons) for the educating of poor children as aforesaid, then the same shall be applied for and towards the educating of as many poor children as the same shall reasonably extend to educate in the manner aforesaid, either boys or girls, at the discretion of the trustees for the time being. PROVIDED ALWAYS, and the charity hereby given and granted is upon this express condition, that in case the same shall at any time be discontinued or come to an end by any judgment of law, decree in equity, or legislative enactment, then and in such case and from

GIFT.

Charity.

And minutes
of proceedings.New trustees on
death, &c.Power for donor
to alter trusts
in his lifetime.If funds deficient
to be applied *pro*
rata.If charity dis-
solved reverter
to donor's heirs.(1) See *post*. p. 532.

GIFT.

Charity.

thenceforth these presents, and the grant and assurance hereby made of the said hereditaments upon the trusts aforesaid, and every thing herein contained, shall cease, determine and be utterly void and of none effect, to all intents and purposes whatsoever, and the same shall descend or go and belong to and be holden by the said trustees thereof for the benefit of such person or persons who for the time being shall be the right heir or right heirs of me the said (*donor*), any thing herein contained to the contrary thereof in anywise notwithstanding. PROVIDED ALWAYS, &c. [*Trustees not answerable for more monies than they shall receive nor for the acts of each other.*] (1) IN WITNESS, &c.

(1) See *post.* p. 533.

Registry.

* * By stat. 52 Geo. 3. c. 102. it is enacted, that a memorial (which see *post.* "MEMORIAL") of all charitable donations to issue out of land or funded property for the benefit of any persons not being Quakers, shall be registered by the trustees or possessors thereof in the office of the clerk of the peace of the county or place where the persons to be benefited thereby shall be resident; see also 58 Geo. 3. c. 91. relative to such charities as are connected with the education of the poor.

GIFT.

Charity.

Rider A.

Variation where a Rent-charge is created for the preceding purposes.

(See *ante*, p. 526, n. (2).)

HATH given, granted, bargained, sold and confirmed, and by these presents doth for himself, his heirs and assigns, give, &c. unto the said (*trustees*), their heirs and assigns, one annuity or yearly rent-charge of £ , of, &c. to be yearly issuing and going out of ALL, &c. To HAVE, HOLD, perceive and yearly to receive, take and enjoy the said annuity or yearly rent-charge of £ unto and to the use of the said (*trustees*), their heirs and assigns, for ever, to be paid and payable half-yearly at the two most usual feasts or days of payment in the year, (that is to say) on, &c. by even and equal proportions, the first payment thereof to begin and be made at the feast day of now next ensuing, and every of the said payments to be made without any manner of deduction or abatement for or in respect, &c. upon and for the several trusts, intents and purposes, and subject to the provisoes, conditions and agreements hereinafter declared or expressed concerning the same. AND the said (*donor*) for himself, his heirs and assigns, doth covenant and grant to and with the said (*trustees*), their heirs and assigns [*covenant to enter and distrain for non-payment* (1)]. AND the said (*donor*) for himself, his heirs and assigns, doth covenant and grant to and with the said (*trustees*), their heirs and assigns, that in case the said annuity or yearly rent-charge of £ , or any part thereof shall be behind or unpaid by the space of days next over, &c. [*to enter and receive the rents* (2).] PROVIDED ALWAYS and it is hereby agreed and declared by and between the parties to these presents, that the said annuity or yearly rent-charge is hereby granted to them the said (*trustees*), their heirs and assigns, upon and for the several trusts, intents and purposes, and subject to the provisoes, conditions and agreements following, (that is to say) UPON TRUST and confidence that they the said (*trustees*) and the survivor of them, and the heirs of the survivor, and their and his assigns, shall and will from time to time and at all times hereafter pay, apply and dispose, &c. [*to the same effect as ante* (3).]

(1) See *post*. p. 575.

(2) See *ante*, p. 263.

(3) See *ante*, p. 527, or *post*. p. 532.

Distress, &c.
Entry.
Trusts.

GIFT.

Charity.

Rider B.

Variation where the Trusts are for Support of a Religious Sect.(See *ante*, p. 527, n. (1).)Support of a
minister.Preference to in-
habitants.Provision for
filling up trust-
tees.

UPON TRUST for and towards the relief, support and maintenance of poor Protestant dissenting ministers of the gospel, within that part of the United Kingdom called England, and for and towards the maintenance, education and qualifying of youths designed for the work of the ministry amongst dissenting Protestants within the aforesaid limits, or for and towards the relief and support of poor widows or orphans of such poor ministers, or the purchase of proper and suitable books to be bestowed upon such poor ministers or youth as aforesaid, or, in, for and towards all or such of the uses, ends, intents and purposes aforesaid, or such other charitable uses, ends, intents and purposes for the relief of poor Protestant dissenters within the limits aforesaid, as the said trustees for the time being or the major part of them shall from time to time in their discretion think fit. PROVIDED NEVERTHELESS, and it is the true intent and meaning of these presents and of the said (*donor*), and it is hereby by him declared, that in the application and distribution of the said trust-monies and effects in the manner aforesaid, particular regard shall be had from time to time to such ministers, youths, widows and orphans as shall be inhabitants of, or born within the said county of _____, and who shall by the said trustees be judged proper objects of the said charities; and that from year to year and until the whole of the said trust-monies shall be applied in the manner aforesaid, a competent part thereof shall accordingly be distributed to and amongst such of the said objects as shall be inhabitants of, or born within the same county. PROVIDED ALWAYS NEVERTHELESS, and it is hereby declared and agreed that when and so soon as the trustees parties to these presents, shall by death or otherwise be reduced to the number of _____, then such _____ trustees or the survivors or survivor of them shall thereupon forthwith elect and make choice of so many and such other fit and proper persons (being Protestant dissenters of good credit and reputation) to be trustees, together with the remaining trustees or trustee for the purposes aforesaid, as shall complete and make up the number of trustees, _____ or _____ at the most, and that thereupon and so soon as

conveniently may be after such choice aforesaid, the then remaining trustees or the survivors or survivor of them, shall by the advice of counsel in the law, well and sufficiently convey, assign and make over all the rest and residue of the said trust-estate monies and premises, so and in such sort as that the same shall be legally vested in the said then remaining trustees or trustee, and such new trustees to be elected and chosen as aforesaid, their heirs, executors, administrators and assigns respectively upon the trusts, and to and for the intents and purposes, and subject to the provisos and argeements in these presents declared or expressed concerning the same monies and premises, and so from time to time and as often as during the trusts aforesaid the said trustees for the time being shall by death or otherwise be reduced to the number of

, to the end that the said trust-estate and premises may not at any time come to or vest in the heirs, executors or administrators of any single surviving trustee. PROVIDED ALWAYS NEVERTHELESS, and it is hereby declared and agreed that there shall not at any time hereafter during the continuance of the trusts aforesaid, be elected or chosen into the number of trustees for the purposes aforesaid, above the number of one minister of the gospel (to be living and acting in the aforesaid trusts) at one and the same time, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. PROVIDED ALSO, and it is hereby further declared and agreed that it shall be lawful for the trustees for the time being of the said trust-estate and premises, or the major part of them (as and when any monies belonging to the said trust-estate shall come in, and until the same monies shall be applied and distributed for the purposes aforesaid), to lend and place out the same or any part thereof upon any public or private security or securities at interest, or to invest the same in the purchase of shares in any of the public stocks or funds of the Bank of England, South Sea Company, or in the purchase of South Sea Annuities, or otherwise to improve the same monies or any part thereof, in such manner as the said trustees for the time being or the major part of them shall from time to time think fit, subject nevertheless to the trusts aforesaid. AND FURTHER that the same trustees or any of them, their, or any of their heirs, executors or administrators shall not be charged or chargeable with or accountable for any more monies or greater part of the said trust-estate and premises than they respectively shall actually receive or which shall come to their respective hands by virtue of these presents, nor with or for any loss which shall happen to the same monies and estate or any part thereof, so as such loss shall happen without their wilful default, nor shall the one of them be answerable for the other or others of them, or for the acts or defaults of the other or others of them, but each for his own acts and defaults only. AND further that it shall be lawful for them the said trustees, and each and every of them, their and each and every of their heirs, executors and administrators, in the first place, by and out of the said trust-

GIFT.

Charity.

Not more than one minister a trustee.

Power to invest trust-mones out at interest.

Trustees not to be answerable for each other;

may retain expences

ESTATE.

Charity.

and an allowance
for trouble.

Power for donor
to revoke the gift.

estate and premises, to deduct and reimburse himself and themselves all such necessary costs, charges, damages and expenses as he, they or any of them shall sustain, expend or be put unto in the execution or by reason of the trusts aforesaid, or any thing in anywise relating thereunto. PROVIDED FURTHER, that it shall be lawful for the acting trustees for the time being of the said trust-estate and premises, yearly, and from time to time during the continuance of the aforesaid trusts, to deduct and retain by and out of the same estate and premises to and for their own use, for their trouble and care in the performance of the same trusts the yearly sum of £ , of lawful money of Great Britain, to be equally shared and divided amongst such acting trustees for the time being, over and above all such costs, charges, damages and expenses as aforesaid. PROVIDED LASTLY, and it is hereby further declared and agreed that it shall be lawful for the said (*donor*) at any time or times hereafter during his life by any deed or deeds, or writing or writings under his hand and seal to be by him signed, sealed and executed in the presence of two or more credible witnesses, to revoke, alter, annul and make void all and every or any of the trusts, declarations and agreements hereinbefore declared or made of or concerning the said trust-estate and premises or any part thereof, and by the same deed or deeds, writing or writings, or by any other deed or deeds, writing or writings, to be by him sealed and delivered as aforesaid, to direct, limit and declare or appoint any new or other use or uses, trust or trusts, directions, declarations or appointments of or concerning the same trust-estate and premises, or any part thereof, as to him the said (*donor*) shall seem meet, and so from time to time and as often as he shall think fit, anything herein contained to the contrary notwithstanding.

GRANT.

Land
(churches).

No. CCCLVII.

* *A Grant of Crown Lands for the erecting a Church, &c. under*
 3 Geo. 4 (1).

I [*or we or the corporate title of a corporation*] under the authority and for the purposes of an Act passed in the fifty-eighth year of the reign of his late Majesty, intituled "*An Act for Building and Promoting the Building of Additional Churches in Populous Parishes,*" and of another Act passed in the fifty-ninth year of the reign of his late Majesty, intituled "*An Act to Amend and render more effectual an Act passed in the last Session of Parliament for Building and Promoting the Building of Additional Churches in Populous Parishes,*" and of another Act passed in the third year of his present Majesty, intituled "*An Act to Amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of his late Majesty for Building and Promoting the Building of Additional Churches in Populous Parishes,*" do hereby freely and voluntarily give to his Majesty's Commissioners, [*or to*] (*as the case may require*) and by these presents freely and voluntarily and without any valuable consideration [*if the lands, &c. are conveyed for a valuable consideration leave out the words in italics and insert, Do for and in consideration of the sum of £* to me *or us or the* paid, hereby, under the authority of the several recited acts, *grant*, convey, and release to the said] ALL [*de-*

(1) The stat. 3 Geo. 4. c. 72. in amendment of the acts 58 and 59 Geo. 3. for the encouragement of building additional churches, empowers the principal officers of any public department under Government having lands, &c. belonging to the crown, to convey the same to be used as or for enlarging of sites for churches or chapels, or enlarging church-yards or cemeteries, or for residences for ecclesiastical persons; which conveyances shall be made as near to the above form as circumstances will permit, and be a bar to all estates tail and other rights and incumbrances whatsoever.

GRANT.

Land
(churches).

scribing the premises to be conveyed] and all [my or our or the] right, title, or interest of [*if a corporation*], to and in the same and every part thereof, to hold to the said and their successors for the purposes of the said several acts, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the said several recited acts. IN WITNESS, &c.

Stamp.

. No stamp is requisite on this instrument, all grants, &c. made in pursuance of the act cited in the preceding note being exempted.

GRANT.

Glebe or Tithes
(churches).

No. CCCLVIII.

**A Grant of Glebe Lands or Tithes by way of Sale for the purchase of other Lands, under 17 Geo. 3. (1)*

THIS INDENTURE made the day of in the
year of the reign of his Majesty King George the , and in
the year of our Lord 18 , BETWEEN A. B. ordinary of the
rectory, (vicarage, chapelry or perpetual cure *as the case shall be*), of
in the county of C. D. of patron of the
said rectory, &c., and the reverend E. F. clerk, incumbent of the
said rectory, &c. of the one part, and G. H. of of the other
part. WHEREAS in the execution of an Act passed in the seven-
teenth year of the reign of his Majesty King George the Third, en-
titled, &c. [*here set forth the title of the Act*], it hath been found
convenient to purchase certain lands, &c. [*describe particularly the*
lands purchased], lying near and convenient to the parsonage-house
belonging to the said rectory, &c. [*or if the house be lately pur-*
chased, lying near a certain messuage, house or tenement and build-
ings lately purchased for the habitation of the minister of the said
rectory, &c. under the powers of the said Act], and it hath been
found most convenient, and agreed by the said ordinary, patron and
incumbent that the glebe lands, [*or tithes as the case shall be*],
hereinafter described, belonging to the said rectory, &c. shall be sold
to raise the sum of £ , being the purchase-money for the

(1) By the 17 Geo. 3. c. 53. sec. 11, (amended by 21 Geo. 3. c. 66. 17 Geo. 3. c. 53. and 3 Geo. 4. c. 72,) the ordinary, patron and incumbent of any living or benefice not having a convenient house of residence upon it, are authorized to purchase one, and for that purpose may sell or exchange any of the glebes or tithes belonging to such living or benefice, the deed of conveyance of which if sold is directed to be to the above effect. The form of an exchange for the like purpose will be found *ante*, "EXCHANGE."

GRANT.

Glebe or Tithes
(churches).

said lands hereinbefore described, in order to make an equivalent for such lands, and a contract hath been made with the said G. H. for the absolute sale at the price or sum of £ , of part of the glebe land [*or of the tithes as the case shall be*], belonging to the said rectory, &c. hereinafter mentioned, that is to say, [*here describe the particulars of the land or tithes proposed to be sold*], which contract is hereby ratified and confirmed by the said ordinary, patron and incumbent: NOW THIS INDENTURE WITNESSETH, that the said A. B., C. D. and E. F. in order to carry the said contract into execution and to fulfil the purposes of the said recited Act in pursuance of the powers thereby to them given, and in consideration of the sum of £ the receipt whereof is hereby acknowledged on the back of this deed, which sum hath been paid and applied in the purchase of the lands hereinbefore described, have and each of them hath granted, bargained and sold, and by these presents do and each of them doth grant, bargain and sell unto the said G. H. and his heirs and assigns ALL, &c. [*here describe the lands or tithes as the case shall be*], with their and every of their rights, privileges and appurtenants, to hold to and to the use of the said G. H., his heirs and assigns, for ever. AND the said A. B., C. D. and E. F. do hereby severally covenant for themselves, their several executors and administrators, to and with the said G. H., his heirs and assigns, that they nor any of them have or hath done any act whereby the said lands [*or tithes as the case shall be*] can or may be incumbered; and that the said G. H., his heirs and assigns, shall and may from time to time for ever hereafter peaceably and quietly hold and enjoy the said glebe lands [*or tithes as the case shall be*] according to the true intent and meaning of the said Act, without any let, hindrance or interruption of or from them, or any of them. IN WITNESS, &c.

Stamp.

. No Stamp requisite; see the act referred to in the preceding note.

GRANT.

Lands
(road-trusters).

No. CCCLIX.

**A Grant of Lands by Commissioners or Trustees of Turnpike Roads, under 4 Geo. 4. c. 95. (1)*

WE (*number*) of the trustees or commissioners acting in execution of an act passed [*here insert the title of the act appointing them*] in consideration of the sum of £ to us paid by (*the purchaser*) do hereby grant and release to the said (*the purchaser*), all [*describing the premises to be conveyed,*] and all our right, title and interest to and in the same, and every part thereof, to hold to the said (*the purchaser*), his heirs, executors, administrators and assigns, for ever, by virtue and according to the true intent and meaning of an act passed in the fourth year of the reign of King George the Fourth, intituled, An Act [*here set forth the title of this act*]. IN WITNESS whereof we have hereunto set our hands and seals this day of

(1) The act of 4 Geo. 4. c. 95. s. 55. authorizing the sale of lands, &c. 4 Geo. 4. c. 95. by the commissioners and trustees of turnpike roads for the purposes of the Turnpike Act, directs that all sales and conveyances to be made by the trustees shall be made at the expense of such trustees or commissioners and shall be expressed in the above or some similar form of words, as the circumstances of the case may require.

GRANT.

Tolls
(turnpike).

No. CCCLX.

**A Grant of Tolls by way of Security for Money borrowed
under 3 Geo. 4. c. 126. (1)*

By virtue of an Act passed in the year of the reign of
intituled [*here set forth the title of this Act*] WE
whose hands and seals are hereunto subscribed and set, being
of the trustees (or commissioners) for putting into execution an Act
passed in the year of the reign of intituled
[*here set forth the title of the Act under which the trustees or
commissioners borrowing the money and granting the mortgage
shall act*] in consideration of the sum of £ sterling advanced
and paid by A. B. of to the treasurer of the said trustees
(or commissioners), do hereby grant and assign unto the said A. B.
and his executors, administrators and assigns such proportion of the
tolls arising and to arise on the said turnpike-road and the toll-gates
and toll-houses erected or to be erected for collecting the same as
the said sum of £ doth or shall bear to the whole sum now
or hereafter to become due and owing on the security thereof, To
HAVE, HOLD, RECEIVE and TAKE the said proportion of the said tolls,
toll-gates, toll-houses and premises, with the appurtenants, unto the
said A. B. and his executors, administrators and assigns, for and du-
ring the residue of the term for which the said tolls are granted by
the said last mentioned Act, unless the said sum of £ , with
interest after the rate of per centum per annum, shall be

3 Geo. 4. c. 126.

(1) By 3 Geo. 4. c. 126. (sec. 8.) the trustees or commissioners of turnpike roads are empowered to borrow and take up at interest, on the credit of the tolls, and to mortgage the same and the turnpikes and toll-houses as a security for repayment; which mortgage is directed to be in the words or to the effect of that given above.

NO. CCCLX.]

CONVEYANCING.

541

sooner repaid and satisfied. Given under our hands, this
of in the year .

day

GRANT.

Tolls
(turnpike).

* * The act above cited requires, that all mortgages made in pursu- Entry.
ance thereof shall be entered in a proper book by the clerk of the
trustees, which may at all times be inspected without fee.

GUARANTEE.Letter of Credit.

No. CCCLXI.

**A Guarantee for Payment of Monies to be advanced, for Goods taken on credit (1).*

SIR,

IN consideration of your having agreed to sell to C. D. of, &c. goods in the way of his trade [*or if so to advance the said C. D. such sum of money as he shall have occasion for at*] I the undersigned E. F. do hereby undertake to guarantee to you the due payment of all such goods [*or money*] as you may from time to time sell [*or advance or pay*] to him or his order [*add if for goods whether the same be sold on credit or otherwise, and notwithstanding I shall not have notice of any neglect or omission which may happen on the part of the said C. D. in the payment for such goods according to the credit that may be agreed on for the same*] but so as my liability shall not at any time or in any event exceed the sum of

Letter of Credit.

(1) Letters of credit or surety guarantee-ships are very common with merchants and others going into distant parts, as they avoid the trouble and risk of carrying specie for payment of expenses or making purchases; the money furnished or given credit for, is by the custom of merchants understood to be according to the coin or value of money of the place. If the person to whom the guarantee is addressed accept it, by supplying the goods or the money required, the surety or person guaranteeing is bound to pay by acceptance of bills drawn upon him, or otherwise to the order of the person accommodated, the credit being given to the surety and not to the party himself; hence the surety should be careful to preserve the letter of credit as a material evidence for his security, but should the person to whom the letter of credit is addressed refuse acceding to the terms of it, the bearer is to apply to a notary, as in the case of a refusal to accept a bill of exchange, in order that if the drawee have money of the drawer's in his hands, damages may be recovered for refusal; and see 1 Beaw. Lex. Mer. 607.

£ AND I further agree that this guarantee or engagement shall not be withdrawn, but shall continue in full force until the expiration of one calendar month after notice to you by writing under my hand of my intention to discontinue or determine the same.
Dated this day of

GUARANTEE.Letter of Credit.

To Mr. A. B.

E. F.

HYPOTHECATION.

Ship.

No. CCCLXII.

**An Hypothecation (1) of a Ship and Cargo.*

KNOW ALL TO WHOM this Instrument of bond and bill of maritime risk and bottomry may come, that in the year from the birth of our Lord Jesus Christ, *Anno* , on the day of the month of , in the city of , in my office personally appeared (*captain or master, &c.*) captain of the imperial ship called the whom I know to be the real person, and he declared to me [*common form*] in the presence of the witnesses hereinafter mentioned, that within hours after the arrival of his said ship at , or any other port, and previous to beginning to make any delivery of the cargo at the port aforesaid, or any other port, he the captain, or whosoever may act in lieu of him, or in case of his absence, perform the duties of his said quality, shall or will pay, by this bill of risk, sea exchange, and bottomry to (*lender*), professed in the order of Christ, or to his order, the sum of £ sterling, principal and premium, of risk and sea exchange, at the rate of £ per cent. the which principal he acknowledged to have received here of the said (*lender*) in the good current money of this realm, under the denomination

Hypothecation.

(1) The hypothecation of a ship is the pledging or mortgaging it for necessities, which by the civil or admiralty law may be done by the master, factor, purser, or any reputed owner, in case of the ship or crew being in distress or want of necessities either at sea or in harbour, and the contract will be binding on the traders and owner; see *Bridgman's Ca.* Hob. 11; *Scarborough v. Lyrins*, Noy Rep. 195.

As forms of this species of assurance are kept by the notaries, ready prepared in blank, I have thought it sufficient to insert one only.

Where the pledge is not for the necessities of the ship, in case of extremities, it is denominated a conditional *Bill of Sale*, for which see *ante*, p. 57, and see *post.* next precedent.

HYPOTHECATION.

Ship.

of true and legitimate money of sea-exchange and bottomry on the hull, keel and appurtenances of the aforesaid ship, and therewith to supply the wants of the repairs, caulking, and of the cargo of the same, on which he had effectively invested it, the said (*lender*) taking upon himself, and in consideration of the aforesaid premium of £ per cent. voluntarily agreed for and settled between them, to run the sea risk on the said hull, keel and appurtenances and cargo of the said ship, in her ensuing voyage, which the said captain is about prosecuting, from this port of to that of , these being the risks which the aforesaid (*lender*) takes on himself and is to run; such as of the sea, winds, fire, stranding and shipwreck, enemies and false friends, detentions of princes and reprisals, during the whole of the said voyage; excepting nevertheless those of barratry of the master, and of average, as well particular as general, the which are expressly excluded; the which risk shall commence to run from the hour the ship shall leave her first anchor to set sail from this port to that of and shall cease in twenty-four hours after having come to an anchor; and for the ready payment of the aforesaid sum, he the captain binds himself, and his effects in general, dues and funds, both in actual possession and future, and by special mortgage, the cargo, freights due or that may become due; and in case of failure of the prompt payment in due time, he binds himself, under this clause of mortgage, to pay to him, or his order, for all the delay until full payment, at and after the rate of £ per cent. per annum; and there being also present (*mate*) mate of the said ship, by whom it was declared, that in case of the absence of the aforesaid captain, he bound himself to fulfil the contents of this bond they thus executed and accepted, after these presents being read to them, and I (*the notary*) in the name of whomsoever it may concern being absent; to all which were witnesses present, (*interpreter*) who also acted as interpreter as well for the captain as for the mate, he being then vice-consul, and (*lender*), who, together with the parties, signed thereto; (*notary*), the notary, wrote it; (*presentees*) and (*notary*) notary public of notes in the city of , and its district, of his royal highness the prince , our lord, whom God preserve, caused this instrument to be transcribed from my book of notes, to which I refer myself, and have subscribed it and signed it in public form.

(*lender*)

{ In testimony of the truth (*notary*)
 whose handwriting is certified by
 () vice-consul.

HYPOTHECATION.

Ship.

No. CCCLXIII.

**An Hypothecation, by way of a Bill of Sale, and Assignment of Ship and Cargo for Securing Money lent (1).*

Recitals.

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN (*lender*) of, &c. of the one part, and (*owner*) of, &c. of the other part. WHEREAS the said (*owner*) is sole owner of a certain ship or vessel, called the , whereof (*master*) is master, now on the Southern Whale Fishery, and intended to return from thence with the produce of her fishing to Great Britain: AND WHEREAS by a certain instrument in writing, or policy of insurance, underwritten and subscribed at London in the month of last past, an insurance was effected in the name of the said (*owner*) on the said ship or vessel called the , her whaling stores, guns, &c. [*pursue the form of the policy.*] AND WHEREAS the said (*owner*) stands indebted unto the said (*lender*), trading upon an account current subsisting between them, in a large sum of money, and he the said (*lender*) is likely to become further in advance for him the said (*owner*) by effecting insurances on the said ship or vessel, and the produce of her fishing, and entering into further engagements, and making further payments on his account: AND the said (*owner*) as a security to the said (*lender*), for the balance now due and owing to him upon the said account current, and to induce him to make further payments and advances to him the said (*owner*), and on his account, hath proposed and agreed to assign to him the said (*lender*) the said ship or vessel with her appurtenances, and the said policy effected thereon, and the produce of her fishing, as a secu-

(1) The above, although substantially an hypothecation, and therefore here placed, is as to its form and tenor rather in the nature of a bill of sale or mortgage.

rity for the same and interest, as hereinafter more particularly is mentioned: Now THIS INDENTURE WITNESSETH, that in pursuance of the said proposal and agreement so made by the said (*owner*) to and with the said (*lender*), in consideration of the several sums of money advanced and to be advanced by him to and on account of the said (*owner*); and in further consideration of the sum of 5*s.* in hand paid by the said (*lender*) to the said (*owner*), at or immediately before the sealing and delivery of these presents, he the said (*owner*) HATH bargained, sold, assigned, transferred and set over, and by these presents BOTH bargain, sell, assign, transfer and set over, unto the said (*lender*), his executors, administrators, and assigns, all that the said ship or vessel called the _____, of the burthen of _____ tons or thereabouts, now on the South Whale Fishery, and whereof the said _____ is master, together with all and singular the masts, sails, sail-yards, anchors, cables, ropes, cords, boats, oars, pieces of ordnance guns, gunpowder, shot, tackle, apparel, ammunition, provision and furniture to the said ship or vessel belonging or in anywise appertaining, which said ship or vessel hath been duly registered pursuant to the act of parliament for that purpose, and a copy of the certificate of such registry is as follows: "No. _____ In pursuance, &c.;" [*copy the certificate of registry*] (1) and which said register was, on the _____ day of _____ indorsed with the name of (*master*) as the master thereof. AND also, _____ tuns of oil, part of the produce of the fisheries of the said ship, together with the said policy of assurance so effected thereon as aforesaid, and all such other policy or policies for additional or further assurance as shall or may be effected upon the said ship or vessel and her cargo, or either of them, in whose name soever the same may happen to be made, and all such sum and sums of money thereby secured or to be secured, as far as relates to the premises hereby assigned; and all benefit and advantage whatsoever to be had, made, gotten or taken, of or by virtue of the said premises, or any of them, and all the estate, right, title, interest, trust, property, claim and demand whatsoever, both at law and in equity, of him the said (*owner*) of, into or out of the said ship or vessel, and her apparel and stores, and all and singular other the effects and premises hereinbefore mentioned, and hereby or intended to be hereby bargained, sold and assigned, and either or each of them, or any part or parcel thereof, or any of them, and all muniments and writings, relating

HYPOTHECATION.

Ship.

WITNESS.

 Owner assigns
 ship and cargo
 to lender.

(1) See *ante*, p. 245.

generally to do, undertake and perform all and every other act, measure or thing whatsoever which shall be requisite or necessary in or about the premises for effecting the purposes aforesaid, as fully and effectually to all intents and purposes as if he the said (*owner*) was present and actually did the same, he the said (*owner*) hereby ratifying, allowing and confirming and agreeing to ratify, allow and confirm all and whatsoever his said attorneys or attorney, or their or his substitute or substitutes, shall lawfully do or cause to be done in and about the premises by virtue of these presents: PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that if the said (*owner*), his heirs, executors, administrators or assigns, or any of them, shall and do well and truly pay or cause to be paid unto the said (*lender*), his executors, administrators or assigns, all such sum and sums of money as are now due and owing unto him or them, from the said (*owner*), or which he or they shall or may hereafter pay, lay out, advance or become liable to pay to or for the use of the said (*owner*), and by his order, and also such sum and sums of money, costs, charges, damages and expenses as he the said (*lender*), his executors, administrators or assigns, shall pay, lay out, sustain, expend or become liable to pay, under and by virtue of these presents, or of any covenant, clause, agreement, matter or thing herein contained, together with lawful interest for the same, to be computed from the respective days of advancing or paying the same; then, and at any time afterwards, upon the request and at the costs and charges of the said (*owner*), his executors, administrators or assigns, he the said (*lender*), his executors, administrators or assigns, shall and will re-assign and re-convey unto him the said (*owner*), his executors, administrators or assigns, or to whom he or they shall direct or appoint the said ship or vessel, oil, and all and singular the effects and premises hereby or intended to be hereby assigned, or the monies or other considerations for which the same or any part thereof shall happen to be sold, in pursuance or under the clauses or agreements herein contained, any thing herein contained to the contrary thereof in anywise notwithstanding. AND it is hereby further declared and agreed by and between the said parties hereto, that it shall and may be lawful to and for the said (*lender*), his executors, administrators, and assigns, at any time hereafter before the arrival of the said ship or vessel at the port of _____ or other port or place of destination in England, from her present voyage, to effect or cause to be effected one or more policy or policies of assurance, to insure the safe arrival of the said ship or vessel and her cargo at the port of _____ or

HYPOTHECATION.

Ship.

Proviso for redemption on payment of sum due.

Mortgagee may insure.

HYPOTHECATION.Ship.

Power of sale
on default of
payment.

such other ports or places at which it may be intended the said ship shall unload and deliver her cargo, either in his own name or in the name of the said (*owner*), or any other person or person, as his agent or agents, and in such sum or sums of money as he shall think proper, so as not to exceed the value of the interest in and on board the said ship, and to pay the necessary premiums for that purpose, and all costs, charges and expenses attending the same: AND also, that in case the said (*owner*), his executors, administrators or assigns, shall refuse or neglect to pay to the said (*lender*), his executors, administrators or assigns, within months after demand, all such sum and sums of money as shall be then due and owing to him or them from the said (*owner*), or which he or they shall be then liable to pay to and for his use, together with lawful interest for the same to be computed as aforesaid, then it shall and may be lawful to and for the said (*lender*), his executors, administrators or assigns, to sell and dispose of the said ship or vessel, oil, and all and singular other the effects and premises hereby assigned or intended so to be, or any part thereof, either by public auction or private contract, for the most money or best price or prices that can or may in their judgment be reasonably had or gotten for the same; and out of the monies arising from such sale, or otherwise coming to his or their hands on account of the said (*owner*), his executors, administrators or assigns, to retain the same, or so much thereof as shall be necessary to pay and satisfy themselves all such sum and sums of money as shall be due and owing unto him or them, from the said (*owner*), his executors, administrators or assigns, or which he or they shall become liable to pay for him or them, and all expenses and charges attending the said sale, together with lawful interest for the same as aforesaid, and to pay or deliver the residue or overplus thereof, if any, unto the said (*owner*), his executors, administrators or assigns, or to whom he or they shall direct or appoint: AND FURTHER, that it shall and may be lawful to and for the said (*lender*), his executors, administrators and assigns, to keep the said ship or vessel and oil, from and after her arrival at her ports or places of discharge, until the same shall be sold as aforesaid, fully insured from loss or damage by fire or otherwise, at the costs and charges of the said (*owner*), his executors, administrators or assigns. AND the said (*owner*), for himself, his heirs, executors and administrators, doth hereby covenant, promise, and agree to and with the said (*lender*), his executors, administrators and assigns, in manner following; (that is to say) that he the said (*owner*), his heirs, executors or administrators, shall and will well and truly pay or cause to be paid unto the said (*lender*), his

Covenant by
owner to pay
sum due.

executors, administrators and assigns, all and every such sum and sums of money as he has already paid, lent, advanced or become liable to pay, or shall or may hereafter pay, lend or advance, or become liable to pay to or for the use of the said (*owner*), his executors, administrators or assigns, according to the true intent and meaning of these presents, together with lawful interest for the same, to be computed from the respective days of paying or advancing the same: AND that he the said (*owner*) now at the time of the sealing and delivering of these presents, is lawfully, rightfully and absolutely possessed of and entitled to the said ship or vessel, with her tackle, stores and cargo, and other the effects and premises hereinbefore mentioned or intended to be hereby assigned, and is the only true, lawful and rightful owner thereof; AND ALSO, that he the said (*owner*), his executors and administrators, and all and every other person and persons now or at any time or times hereafter having or lawfully or equitably claiming, or to claim the said ship or vessel, oil, and all and singular other the effects and premises hereby or intended to be hereby assigned, or any part and parcel thereof, or any thing out of the same, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*lender*), his executors, administrators or assigns, and at the proper costs and charges of him the said (*owner*), his executors or administrators, make, do and execute, or cause and procure to be made, done and executed, all and every such further and other acts, deeds and things, assignments and assurances in the law whatsoever, for the further, better, more perfect and absolutely assigning and assuring the said ship, oil, and all and singular other the effects and premises hereinbefore mentioned and intended to be hereby assigned, and for empowering him the said (*lender*), his executors, administrators or assigns, to have, take, recover and receive, the same respectively, as by him the said (*lender*), his executors, administrators or assigns, or by his or their counsel learned in the law shall be reasonably advised and required. PROVIDED ALWAYS, that these presents shall not be or be considered as a security for more than the balance or sum of £ at any one time. IN WITNESS, &c.

HYPOTHECATION.

Ship.That he has a
right to assign.Further assur-
ance.Extent of secu-
rity.

. Usual *ad valorem* Stamp; and therefore a limit should be put for Stamp.
the amount of the security as above.

INDEMNITY.Incumbrances.

No. CCCLXIV.

*A Deed of Indemnity against Incumbrances, by Declaration of Trust of Purchase Money invested in the Funds.**Variations where it is against Portions or Legacies, &c. to children not of age.*

Recital of purchase.

Of premises being charged with payment of an annuity.

And with payment of legacy. Of agreement that part of purchase money shall be invested in the Funds.

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN *(the vendor)* of, &c. of the first part, *(the purchaser)* of, &c. of the second part, *(trustees for the vendor)* of, &c. of the third part, and *(trustees for the purchaser)* of, &c. of the fourth part. WHEREAS by indentures of lease and release, the lease bearing date the day next before the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between the said *(vendor)* of the one part, and the said *(purchaser)* of the other part, certain lands and hereditaments therein particularly described were conveyed and assured unto and to the use of the said *(purchaser)* and his heirs by the said *(vendor)*, in consideration of the sum of £ therein expressed to have been agreed to be paid by the said *(purchaser)* to the said *(vendor)* for the absolute purchase of the said hereditaments free from incumbrances. AND WHEREAS under or by virtue of the last will and testament in writing of *(the testator)* late of deceased, bearing date the day of the said hereditaments, together with others, are chargeable with the payment of an annuity or clear yearly sum of £ during the natural life of *(the annuitant)* of, &c. and also with the payment of a legacy or sum of £ unto *(the legatee)* of, &c. upon his attaining the age of twenty-one years. AND WHEREAS upon the contract for the purchase of the said hereditaments it was agreed that the sum of £ part of the said purchase money or sum of £ should be invested in the purchase of three per cent. Consolidated Bank Annuities in the joint names of three or more persons to be named and approved of by the said *(vendor)* and *(purchaser)* upon trust to indemnify the said *(purchaser)* and the said

hereditaments from the payment of the said annuity and legacy so respectively charged thereon as aforesaid, and that a proper deed of declaration of trust thereof should for that purpose be executed by the several parties hereto. AND WHEREAS the sum of £ hath accordingly been this day invested by the said (*purchaser*), with the consent and approbation of the said (*vendor*), testified as hereinafter is mentioned, in the purchase of £ three per cent. Consolidated Bank Annuities in the joint names of the said (*trustees*) as trustees named and approved of by the said (*vendor*) and (*purchaser*) respectively. NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said in part recited agreement and in consideration of the premises aforesaid, it is hereby declared and agreed by and between the several parties to these presents, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, shall stand possessed of and interested in the said sum of £ three per cent. Consolidated Bank Annuities upon the several trusts and to and for the intents and purposes, and under and subject to the provisoes, declarations and agreements hereinafter declared or expressed concerning the same, (that is to say,) UPON TRUST to permit and authorize the said (*vendor*), his executors, administrators and assigns, to receive and take the dividends, interest and annual proceeds of the said trust monies to and for his and their own use and benefit, so long as he or they or any or either of them do and shall well and truly pay or cause to be paid the said annuity or yearly sum of £ unto the said (*annuitant*) during the term of his natural life, and also the said legacy or sum of £ unto the said (*legatee*) upon his attaining his said age of twenty-one years according to the true intent and meaning of the said in part recited will; or do and shall from time to time and at all times hereafter save, protect, defend, keep harmless and indemnified the said (*purchaser*), his heirs and assigns, and also the several hereditaments so sold and conveyed unto the said (*purchaser*) as aforesaid, and all and every the appurtenances thereunto belonging, of, from, and against the same, and also of, from, and against all and all manner of actions, suits, executions and other proceedings whatsoever at law or in equity upon, under, or by virtue or on account of the said annuity or legacy or either of them as aforesaid, and of, from, and against all costs, damages, and expenses whatsoever which shall or may at any time be sustained or occasioned by reason or on account thereof or otherwise in relation thereto. And UPON FURTHER TRUST, that in case the said (*vendor*), his executors or administrators, shall

INDEMNITY.

Incumbrances
(*purchase*
money).

Of purchase
money being in-
vested in the
names of trust-
ees.

WITNESS.

Declaration that
the trustees shall
stand possessed
of the money.

In trust to per-
mit vendor to
receive the divi-
dends so long as
he shall indem-
nify the pur-
chaser.

In default there-
of the trustees
to keep down

INDEMNITY.	at any time fail or neglect to pay or cause to be paid the said annuity or yearly sum of £ , or the said legacy or sum of £ or either of them, or any part of the same respectively, then and in such case that they the said (<i>trustees</i>) and the survivors and survivor of them, and the executors and administrators of the survivor, and their or his assigns, do and shall by and out of the dividends, interest, and annual or other proceeds of the said sum of £ three per cent. Consolidated Bank Annuities, and in case the same shall not be sufficient for that purpose, then by sale, transfer or other disposition of the said sum, or a competent part thereof, to raise and obtain all and every such sum and sums of money as shall be then due, owing, or recoverable upon, under, or by virtue of the said annuity or yearly sum of £ , or the said legacy or sum of £ or either of them, and all such costs, damages and expenses as he the said (<i>purchaser</i>), his executors, administrators, or assigns, shall or may have sustained or be liable to pay in consequence of any such default or neglect as aforesaid, and do and shall pay, apply, and dispose of the monies arising by any of the means aforesaid in payment and satisfaction thereof accordingly; and from and after full payment and satisfaction of all such sum and sums of money, and costs, charges, damages and expenses aforesaid (1), Then UPON TRUST that they the said (<i>trustees</i>), and the survivors and survivor of them, and the executors and administrators of the survivor and their and his assigns, do and shall pay the residue of the said dividends, interest, and proceeds of the said sum of £ three per cent. Consolidated Bank Annuities, or of such part thereof as shall remain after satisfying the trusts aforesaid unto the said (<i>vendor</i>), his executors, administrators and assigns, from time to time, as and when the same shall be received to and for his and their own use and benefit; AND from and after the decease of the said (<i>annuitant</i>) and payment of all arrears of the said annuity or yearly sum of £ , and also payment of the said legacy or sum of £ then upon trust that they the said (<i>trustees</i>), and the survivors
<i>Incumbrances (purchase money).</i>	
the incumbrances.	
And pay surplus to vendor.	

Upon decease of annuitant and payment of legacy.	
--	--

Judgments.

(1) If the incumbrances against which the protection is required, be judgments or monies secured by a term, there may be added here,

“Or an assignment shall be made of the said judgment [*or term, as the case may be*] to one or more trustee or trustees in trust to attend and protect the inheritance of the said hereditaments and premises so sold and conveyed by the said (*vendor*) to the said (*purchaser*), his heirs and assigns, as hereinbefore is mentioned.”

and survivor of them, and the executors and administrators of the survivor, and their and his assigns, or other the trustees or trustee for the time being, do and shall at the request, costs, and charges of the said (*vendor*), his executors, administrators or assigns, transfer, assign and make over the said sum of £ three per cent. Consolidated Bank Annuities, or so much thereof as shall remain undisposed of under the trusts aforesaid, together with all interest, dividends and proceeds then due in respect thereof, unto the said (*vendor*), his executors, administrators, and assigns, to and for his and their own use and benefit. AND the said (*vendor*) doth for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the said (*purchaser*), his heirs and assigns, by these presents in manner following, (that is to say,) that he the said (*vendor*), his heirs, executors, and administrators, or some or one of them, shall and will from time to time and at all times hereafter, during the natural life of the said (*annuitant*), well and truly pay or cause to be paid the said annuity or yearly sum of £ at the times and in the manner in the said hereinbefore in part recited will mentioned, and also well and truly pay or cause to be paid the said legacy or sum of £ unto the said (*legatee*) upon his attaining his age of twenty-one years, according to the true intent and meaning of the said will of the said (*testator*) deceased; and from time to time and at all times hereafter (1) during the subsistence of

INDEMNITY.

Incumbrances
(*purchaser*
money).

Principal to be
transferred to
vendor.

Covenant by
vendor to pay
off incum-
brances.

And in the
meantime in-

(1) If the incumbrances against which protection is necessary, be judgments entered up against the vendor, say, Judgments.

“ Shall and will from time to time and at all times hereafter, well and effectually save, defend, keep harmless and indemnified as well the said (*purchaser*), his heirs, executors, administrators and assigns, as also all and singular the said several and respective messuages, lands, tenements, hereditaments and premises so sold and conveyed to him the said (*purchaser*) as hereinbefore is mentioned, and also all other the lands and tenements, goods and chattels, of him the said (*purchaser*), his heirs, executors, administrators or assigns respectively, or any of them, from and against all the said several recited judgments so obtained or entered up against the said (*vendor*) as aforesaid, and all and every judgment and judgments recovered, obtained or entered up and now in force against him the said (*vendor*), and from and against all debts, yearly and other sum and sums of money due and owing, or recovered or recoverable upon or by virtue of or secured by such judgments respectively, or any of them, and

INDEMNITY.

*Incumbrances
(purchase
money).*

dennify the
purchaser.

Proviso for ap-
pointment of
new trustees on
death, resigna-
tion, &c.

the said annuity, and until the said legacy or sum of £ shall be so paid, well and effectually save, defend, keep harmless and indemnified the said (*purchaser*), his heirs and assigns, and all and singular the messuages, lands, tenements, and hereditaments so sold and conveyed to him the said (*purchaser*), and chargeable with the payment thereof as hereinbefore is mentioned, of, from, and against the same annuity or yearly sum and legacy respectively, and of and from all costs, charges, damages and expenses which he the said (*purchaser*), his heirs or assigns, or his or their lands, tenements and hereditaments shall or may suffer, sustain, or be subject or liable to by reason or means of the non-payment thereof or of either of them, or of any interest or other monies payable in respect of the same. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, that if the said (*trustees named on the part of the vendor*), or any other trustees or trustee to be appointed in their or either of their stead, in pursuance of this proviso, shall happen to die or desire to resign and be discharged from the trusts hereinbefore declared, or shall be about to reside or go beyond the seas before the same shall have been performed, then and in every such case it shall be lawful for the said (*vendor*), and after his decease then to and for his executors and administrators, by any writing or writings under their, his, or her hands and seals or hand and seal, to nominate and appoint any other fit person or persons as a trustee or trustees for the purposes aforesaid, in the room or stead of them the said (*trustees appointed by vendor*), or either of them so dying or desiring to be discharged or going to reside beyond the seas as aforesaid; and in case the said (*trustees named on the part of the purchaser*), or either of them, or any trus-

from all other annuities or yearly sums at any time heretofore given, granted, or created by him the said (*vendor*), and also of, from, and against all actions, suits, executions, loss, costs, charges, damages and expenses, claims and demands whatsoever which he the said (*purchaser*), his heirs, executors, administrators or assigns, or his or their lands and tenements, goods and chattels, or any of them, can, shall or may suffer, sustain, expend or be subject or liable to or charged with, or affected on account or by reason or means of such judgment or judgments, debts, securities, and yearly and other sum and sums of money respectively, or any of them, or in anywise relating thereto."

INDEMNITY.Incumbrances
(purchase
money).

tees or trustee to be appointed in their or any of their stead as aforesaid, shall happen to die or desire to resign or be discharged from the aforesaid trusts, or shall go to reside beyond the seas before the same shall have been performed, then and in every such case it shall be lawful to and for the said (*purchaser*) and his assigns during his lifetime, and after his decease then for his heir or assigns, by any writing or writings under his or their hand or respective hands, to nominate and appoint any other fit person or persons to be a trustee or trustees for the purposes aforesaid, in the room or stead of them the said (*trustees appointed by purchaser*) respectively or either of them, to the end and intent that each of them the said (*vendor*) and (*purchaser*), and their respective heirs, executors, administrators and assigns, may at all times have one or more trustee or trustees of his or their own appointment or nomination; AND upon every such nomination and appointment as aforesaid the said sum of £ three per cent. Consolidated Bank Annuities, or so much thereof as shall remain undisposed of under the trusts aforesaid, shall be transferred and assigned by the then surviving or continuing trustees or trustee, or the executors or administrators of the last surviving trustee, so and in such manner as that the same shall and may become vested in such surviving and continuing and such new trustees or trustee, or in such new trustees only as the case may be, upon the several trusts and for the intents and purposes hereinbefore expressed and declared of or concerning the same. PROVIDED ALSO, and it is hereby declared and agreed by and between the said parties to these presents, that the said trustees in these presents named, and each and every of them, their and each and every of their heirs, executors, administrators and assigns, and such other trustees or trustee as shall or may be nominated and appointed by virtue of the powers hereinbefore in that behalf contained, shall be charged and chargeable with such monies only as they shall respectively actually receive by virtue of the trusts aforesaid, and that no one or more of them shall be answerable or accountable for the other or others of them, but each and every of them for his, her, or their own acts, receipts, neglects or defaults only, nor shall they or any or either of them be answerable or accountable for any misfortune, loss or damage which may happen to the said trust monies or any part thereof in the execution of the aforesaid trusts or in relation thereunto, except the same shall happen by or through his or their own wilful default. AND also that they the said (*trustees*), and each and every of them, and their respective executors, administrators, and assigns, and all and every other the trustees or trustee for the time being of these pre-

Trustees not to
be answerable
for each other.

Trustees may
retain their ex-
pences.

INDEMNITY.Incumbrances
(purchase
money).Covenant by
trustees for due
performance of
the trusts.

sents shall and may by and out of the monies which shall come to their respective hands under or by virtue of the trusts aforesaid, retain to and for himself and themselves respectively, and pay and allow to his or their co-trustees or co-trustee all costs, charges, damage and expenses which they or any or either of them shall or may respectively suffer or sustain, or be put unto, in, or about the trusts aforesaid or in anywise relating thereto, which said costs, charges, and expenses shall be regulated and allowed as between solicitor and client, and not as between party and party. AND the said (*trustees*) for themselves severally and respectively, and for their several and respective heirs, executors and administrators, but not jointly, or the one for the other of them, do hereby covenant, promise, and agree to and with the said (*purchaser*), his heirs, executors, administrators and assigns, that they the said (*trustees*) shall and will, each covenanting separately as aforesaid, as soon and from time to time as often as it shall be necessary that a new trustee or trustees should be appointed under the power or proviso hereinbefore contained, join and concur in all such acts as may be necessary for the purpose of effectually vesting the said sum of £ three per cent. Consolidated Bank Annuities, and other the trust monies and premises aforesaid in themselves or such of them as shall then be or continue a trustee or trustees, and such new trustee or trustees upon the trusts aforesaid, and also in such deed or deeds as may be necessary for declaring the trusts of the said trust monies and premises; and also that they the said (*trustees*), and their respective executors and administrators, shall and will faithfully perform and fulfil all and singular the trusts hereinbefore in them reposed according to the true intent and meaning of these presents. IN WITNESS, &c.

Stamp.

* * * Common Deed Stamp.

INDEMNITY.Breach of Trust
(conveyance).

No. CCCLXV.

**A Deed of Indemnity to a Principal against a Breach of Trust by a Clerk, Agent or other subordinate Officer, by conveyance of a Freehold Estate.*

THIS INDENTURE made the day of in the
year of the reign, &c. and in the year of our Lord 18 , BETWEEN
(*the clerk or his surety*) of, &c. of the first part, (*the principal*) of,
&c. of the second part, and (*trustees*) of, &c. (*trustees appointed for*
the purposes hereinafter mentioned) of the third part. WHEREAS
the said (*clerk*) hath lately been appointed clerk to the said (*prin-*
cipal), and as such will be entrusted with considerable sums of money
belonging to the said (*principal*) and others. AND the said (*clerk*
or surety) as an indemnity to the said (*principal*) against loss by
any breach or negligence in the execution of the trusts reposed in
him, hath proposed and agreed to make such conveyance of the here-
ditaments hereinafter described as hereinafter is contained. Now
THEREFORE THIS INDENTURE WITNESSETH, that in pursuance of the
said proposal and agreement, and in order to save harmless and keep
indemnified the said (*principal*) from all loss which may happen or
be occasioned to the said (*principal*) by any breach of trust or wilful
default or negligence of the said (*clerk*), [and also for and in con-
sideration of the sum of 10s. of lawful money of Great Britain, to the
said (*clerk or surety*) in hand paid by the said (*principal*) at or be-
fore the sealing and delivery of these presents, the receipt whereof is
hereby acknowledged,] HE the said (*clerk or surety*), at the request
and by the direction and appointment of the said (*principal*), by
his sealing and delivering these presents, HATH granted, bargained,
sold, aliened, and released, and by these presents DOTH grant,
bargain, sell, alien, release, and confirm unto the said (*trustees*) and
their heirs, ALL, &c. and the reversion, &c. (1), all which said here-
ditaments are now in the actual possession of the said (*trustees*) by

WITNESS.
Clerk or surety
grants, &c.

(1) Add usual general words, which see *ante*, p. 328, and *ib. n.* (2).

INDEMNITY.

*Breach of Trust
(conveyance).*

To HOLD.

Upon trust by
sale, &c.To raise sum re-
quisite to satisfy
the trust.Rents, &c. to be
received by
grantor till de-
fault.

virtue, &c. (1), TO HAVE AND TO HOLD the said messuages, tene-
ments, or dwelling-houses, pieces or parcels of land, hereditaments,
and all and singular other the premises hereinbefore granted and
released, or otherwise assured or intended so to be, with their and
every of their appurtenances, unto the said (*trustees*) and their
heirs, to the use and behoof of them the said (*trustees*), their
heirs and assigns, for ever; but upon the trusts nevertheless and
to and for the intents and purposes and under and subject to the
powers, provisoes, declarations, and agreements hereinafter declar-
ed or expressed concerning the same; (that is to say) upon trust
that they the said (*trustees*) and the survivor of them, and the
heirs of such survivor, and their and his assigns, do and shall at
any time or times within the space of calendar months
next after the reasonable request of the said (*principal*), in case
of any breach of trust or other default in respect whereof these
presents are made, and such request being testified by writing under
the hand and seal of the said (*principal*), and expressing the grounds
upon which the same is founded, by sale or mortgage of the fee-
simple and inheritance, or by demise for any term or number of
years, or other disposition of the said hereditaments, or of some part
or parts thereof, or by some other ways or means levy, raise, or pro-
cure such sum and sums of money as shall be sufficient for the dis-
charge of the trusts hereby in them reposed, and do and shall pay
and apply the same or the surplus thereof, after payment of all ex-
penses attending upon such sale or other disposition of the said here-
ditaments, and dispose of the same in payment, satisfaction, and
discharge all such sum and sums of money as he the said (*clerk*)
shall have received or been entrusted with by or for the use of the
said (*principal*), and for which he the said (*clerk*) shall not have
actually or *bonâ fide* paid over unto or applied to or for the use of
the said (*principal*) or otherwise faithfully and duly accounted, and
all costs, charges, damages, and expenses which he the said (*prin-
cipal*), his executors or administrators, may have sustained or be
put unto by reason of any such breach of trust or default as afore-
said. AND as to the residue, if any, of the said money so to be re-
ceived as aforesaid, IN TRUST to pay, apply, and dispose of the same
(unto the clerk or surety, or to invest it in the hereditaments for
further indemnities, if the clerk continue to exercise the office,
or otherwise as circumstances may seem proper).] AND UPON
FURTHER TRUST that they the said (*trustees*), and the survivor of

(1) Add the usual reference to the bargain and sale for a year.

INDEMNITY.Breach of Trust
(conveyance).Further trust
on death of clerk
to convey to his
heirs or ap-
pointees.Receipts of pur-
chasers, &c. to
be a discharge.

them, and the heirs of such survivor, and their and his assigns, do and shall stand seised of and interested in the said hereditaments until any such sale, mortgage, or disposition shall be made or be required to be made thereof as aforesaid, IN TRUST to permit and suffer the said (*clerk or surety*) to receive and take the rents, issues, and profits of the same to and for his and their own use and benefit, and subject to the trusts and purposes aforesaid. AND UPON FURTHER TRUST, that they the said (*trustees*) and the survivor of them, and the heirs of such survivor, and their and his assigns, do and shall from and after the decease of the said (*clerk*), or other sooner determination and full satisfaction of the trusts aforesaid, convey and assure all and singular the said hereditaments or such part or parts thereof, and such estate or interest therein as shall not have been sold, mortgaged or otherwise disposed of for the purposes aforesaid, and subject to any mortgage or incumbrance as may have been made thereupon for the said purposes, unto and to the use of him the said (*clerk or surety*), his heirs and assigns, if he shall be then living, but if not, then unto and to the use of such person or persons and for such estate and estates, right and interest, as he the said (*clerk or surety*) shall by any deed or deeds or by his last will and testament, to be by him duly executed and attested, direct or appoint or give or devise the same, and in default thereof unto and to the use of the right heirs of him the said (*clerk or surety*) for ever, and in the mean time do and shall stand seised and interested in the same in trust for him and them accordingly. AND, &c.(1), it is hereby declared and agreed by and between all and every of the parties to these presents, that in case any sum or sums of money shall be paid into the hands of the said (*trustees*) or of the survivor of them, or the heirs of such survivor, or of their or his assigns, by any purchaser or purchasers, mortgagee or mortgagees, or other person or persons, in pursuance or by virtue of these presents, the receipt and receipts of the said trustees or trustee, or of such of them as shall be the only acting trustee for the time being, shall be a good and effectual discharge and good and effectual discharges for the same, and shall wholly exonerate such purchaser, mortgagee, and other person and persons, and their and his executors and administrators, from all necessity or occasion to enquire into the reason or cause of any such sale, mortgage, or other disposition of the said premises, or any estate or interest or term or terms of years therein, or of or in any part thereof, or to regard any notice

(1) If the grantor be married and the premises are considered to be an inadequate security, add covenant to levy a fine; see *ante*, p. 366.

INDEMNITY.

*Breach of Trust
(conveyance).*

Covenant by
grantor.

of there being no reason or cause or no sufficient reason or cause for the same, and from being in anywise liable or accountable for the loss, mis-application, or non-application of such money or of any part thereof. AND the said (*clerk or surety*) for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree to and with the said (*trustees*), their heirs and assigns, by these presents in the manner following; (that is to say) that from and after the time or times of contracting for or completing any sale, mortgage, or other disposition of the aforesaid hereditaments, premises, or any of them or any part thereof, under or by virtue of these presents, he the said (*clerk or surety*) and his heirs shall and will stand, remain, and be for ever excluded, barred, and estopped, from all legal and equitable right, title, claim, and demand whatsoever of and in the same, in case of any absolute sale or disposition thereof or of any term of years therein, and in case of any mortgage conditional or trust created thereof or therein, then subject in all things thereto according to the true intent and meaning thereof, and of the conveyances, demises, or assurances thereof, and that every purchaser, mortgagee, or lessee of the said hereditaments respectively, and his, her and their heirs and assigns, shall afterward hold and enjoy the said premises freed and discharged of and from all right, title, claim, demand, and redemption whatsoever of, from or by him the said (*clerk or surety*) or his heirs, and of every other person or persons claiming or to claim by, from, or under him, them, or any of them, in like manner and as fully and effectually to all intents and purposes as if the same premises had been sold, mortgaged, or otherwise disposed of or charged by him the said (*clerk or surety*), his heirs or assigns, or by virtue of any judgment or decree in any court of law or equity. AND, &c. [*add covenants for the title, &c. (1) power to appoint new trustees in case of death, &c. and usual clauses for their indemnity (2)*]. IN WITNESS, &c.

(1) See *ante*, p. 286.

(2) See *ante*, p. 556.

INDEMNITY.

*Judgments
(purchase
money).*

No. CCCLXVI.

**Deed of Indemnity against Judgments by Declaration of Trust of Purchase Money, on Sale of Estates by Trustees for Payment of Debts, &c.*

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN (*trustees for sale*) of, &c. of the first part, (*purchaser*) of, &c. of the second part, (*cestui que trust*) of, &c. of the third part, and (*trustees of the purchase money*) of, &c. of the fourth part. WHEREAS, &c. Recitals.
[*recital of conveyance to trustees in trust to sell, and of judgments, &c. chargeable upon the premises.*] AND WHEREAS the said (*vendor-trustees*) have contracted for the sale of the messuages and hereditaments, situated &c. and being part of the hereditaments comprised in or otherwise affected by the said recited securities; and in order to facilitate the completion of such sale the said (*vendor-trustees*) have proposed and agreed that the sum of £ part of the said purchase-money agreed to be paid for the purchase of the said hereditaments shall be invested in the purchase of three per cent. Bank Annuities, as a fund for the better security and indemnification of the said (*purchaser*) from and against the said recited incumbrances: AND WHEREAS in pursuance of the said agreement the said (*vendor-trustees*) have this day by and with the consent and direction of the said (*purchaser*) and (*cestui que trust*) (testified as hereinafter is mentioned,) purchased and transferred the sum of £ three per cent. Consolidated Bank Annuities, unto and in the joint names of the said (*indemnity-trustees*), into the books of the Governor and Company of the Bank of England as by reference thereto will appear, upon the several trusts and to and for the ends, intents and purposes hereinafter declared or expressed concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, it is hereby covenanted, declared and agreed by and between all the par-

WITNESS.
Declaration of
trust of Bank
Annuities.

INDEMNITY.Judgments
(purchase
money).Trust to pay ex-
penses of the
trust.To satisfy judg-
ments.Satisfied judg-
ments to be as-
signed to attend.

ties to these presents for themselves, and their respective executors, administrators and assigns, so far as they are respectively interested, that the said sum of £ per cent. Bank Annuities was so transferred into the names of them the said (*indemnity-trustees*) as aforesaid, and that they, and the survivors or survivor of them, and the executors and administrators of the survivor, and their and his assigns, shall, and will henceforth stand possessed thereof and interested therein upon the several trusts, and to and for the several intents and purposes, and under and subject to the provisos and declarations following; (that is to say) UPON TRUST by sale, transfer or other disposition of the said sum of £ per cent. Consolidated Bank Annuities, or of any part thereof, or by and out of the interest, dividends and annual produce from time to time to arise therefrom, raise such sum and sums of money as shall be sufficient for the payment of the costs, charges and expenses attending the execution of the trusts of these presents, and shall and will pay and satisfy the same accordingly. AND then upon trust that they the said trustees and trustee do and shall by sale, transfer or other disposition of all or any part of the said per cent. Consolidated Bank Annuities, and by and out of the interest, dividends and annual produce to arise therefrom, raise all such sum and sums of money as shall be sufficient to pay off and discharge or satisfy all and every sum and sums of money which shall be then due, owing or recoverable upon, under or by virtue of any or either of the said several judgments so confessed or to be entered up by the said (*creditors*), or any or either of them, against the said (*cestui que trust*), and then remaining unsatisfied as aforesaid, and from and against all costs, damages and expenses whatsoever to be sustained or occasioned by or in consequence of the said judgments or any or either of them, or of any action or actions, suit or suits, execution or executions relative thereto, and shall and do pay and apply the monies so to be raised or a sufficient part thereof (subject as aforesaid) in or towards such payment and satisfaction thereof accordingly; and from and after full payment and satisfaction of all such sum or sums of money as shall or may so become due, owing or recoverable upon or under the aforesaid judgments or either of them, and all other such costs, charges, damages, and expenses as aforesaid, when and so soon as satisfaction shall be entered of or upon the said judgments respectively, or an assignment thereof shall have been made to a trustee or trustees in trust to attend and protect the inheritance of the said hereditaments and premises so as aforesaid sold and conveyed by the said (*vendor-trustees*) unto the said (*purchaser*), his heirs and as-

INDEMNITY.Judgments
(purchase
money).Surplus in trust
for cestui que
trust.

signs, then upon trust, that they the said trustees and trustee shall and do at the request, costs and charges of the said (*cestui que trust*), his executors, administrators, or assigns, transfer or pay and make over the aforesaid trust stock or sum of £ per cent. Consolidated Annuities or so much thereof as shall remain undisposed of under the trusts aforesaid, and all the surplus or residue (if any) of the monies and proceeds to arise therefrom unto him the said (*cestui que trust*), his executors, administrators or assigns, for his and their own use and benefit. PROVIDED ALWAYS, &c. [*Add power of appointing new trustees in case of death, &c. and usual clauses of indemnity* (1).] IN WITNESS, &c.

(1) See *ante*, p. 556.

INDEMNITY.

*Legacies
(purchase
money).*

No. CCCLXVII.

**Deed of Indemnity against Legacies or Portions by Investment
of Purchase Money in Bank Annuities.*

Variations where the charge is an annuity.

Recitals.

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN (*the vendor*) of, &c. of the first part, (*the purchaser*) of, &c. of the second part, and (*three trustees* (1)) of, &c. being trustees appointed for the purposes hereinafter mentioned, of the third part. WHEREAS, &c. [*recite will, charging the premises with payment of legacies or annuities, death of testator, and sale and conveyance to the purchaser*]. AND WHEREAS the said (*legatee*) is at present under the age of twenty-one years, and incapable of discharging the said hereditaments from the said respective legacies. AND WHEREAS in order to indemnify the said (*purchaser*) therefrom, it has been agreed that the sum of £ part of the said purchase-money shall be invested in the three per cent. Consolidated Bank Annuities, in the names of the said (*trustees*), upon the trusts hereinafter mentioned, and the same hath been so invested accordingly, and hath produced the sum of £ of such annuities, which have been this day transferred into the names of the said (*trustees*), into the books of the Governor and Company of the Bank of England. Now THIS INDENTURE WITNESSETH, that in pursuance of and for carrying into effect the said recited agreement, it is hereby declared and agreed by and between the several parties hereunto, according to their respective interests, that the said sum of £ three per cent. Consolidated Bank Annuities hath been so transferred into the names of

WITNESS.
That amount of
legacy has
been invested
in the Funds.

Trustees.

(1) There should be three trustees, in all cases of Bank Annuities, lest, if but two, the money should become at the disposal of one survivor; and for the greater security and satisfaction of the purchaser, he may be one of them.

INDEMNITY.Legacies
(purchase
money).Upon trust to
indemnify.To be transferred to
legatee on
attaining 21.

them the said (*trustees*), and that they and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his transferees and assigns, shall and will stand possessed of and interested in the same, and the dividends, interest and proceeds from henceforth to accrue and be payable in respect thereof, UPON the trusts and for the intents and purposes following, (that is to say,) UPON TRUST (1) for indemnifying and saving harmless the said (*purchaser*), his heirs and assigns, and the messuage or tenement and premises so conveyed to him and them, and of and from the said legacy or sum of £ , and all interest now or hereafter to become due and payable in respect thereof, and all claims and demands whatsoever on account of the same, AND to and for that end, intent and purpose, upon further trusts, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall pay, assign and transfer the said Bank Annuities, or so much thereof as according to the then market price shall be equal to the said sum of £ , when the said (*legatee*) shall attain his age of twenty-one years, unto him the said (*legatee*), his executors,

(1) If the trust be for indemnifying against payment of an annuity chargeable upon the premises, say, Annuity.

" UPON TRUST that they the said (*trustees*), and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, do and shall from time to time by and out of the dividends and annual produce of the said sum of £ three per cent. Consolidated Bank Annuities, or in case the same shall at any time or times be insufficient for that purpose, then by and out of the principal of the same stock, pay and discharge the aforesaid annuity or yearly rent-charge of £ , when and as the same shall become due and payable, and all costs, charges and expences, if any, to be occasioned by the non-payment thereof, to the end and intent that the said several hereditaments and premises purchased by the said (*purchaser*) as hereinbefore is mentioned, may be and remain protected and indemnified from and against the said annuity or yearly rent-charge and every part thereof, and all claims and demands for or in respect of the same, so long as the same shall be subsisting and after the extinguishment thereof, by any means whatsoever, and all expenses attending the same. Then in TRUST for, &c. (*as the case may require*).

INDEMNITY.

*Legacies
(purchase
money).*

Further trust to
apply dividends
for legatee in the
meantime.

administrators, or assigns, in discharge of the said legacy or sum of £ so given to him by the will of the said (*testator*) as aforesaid. AND upon this further trust, in the mean time and until the said legacy shall become payable, that they the said (*trustees*) or the survivors or survivor of them, and the executors and administrators of the survivor, and their or his assigns, shall and do from time to time pay, lay out and apply the dividends, interests and proceeds of the said Bank Annuities, as the same shall from time to time become due and be received, in such manner and for such ends and purposes as in or by the said in part recited will of the said (*testator*) deceased, is directed concerning the same, or otherwise as according to the rules of law and equity the same shall for the time being be applicable, and as to so much thereof of which no such direction has been given, or of which no rule of law or equity shall otherwise require, do and shall invest the same from time to time as and when the same shall be paid or payable, in the purchase in like Bank Annuities in the names of them the said trustees or trustee, in order that the stock purchased therewith may be an accumulating fund, and be applicable and applied upon and for the same trusts, intents and purposes as are hereinbefore expressed or intended of or concerning the said legacy or sum of £ so hereinbefore invested as aforesaid, for the better indemnity of the said (*purchaser*), his heirs and assigns, and the aforesaid messuages or tenements and hereditaments. PROVIDED always, &c. [*add power to appoint new trustees, in case of death, &c. and for indemnity if the trustees are not those appointed by the will, or no provision be made in the will for that purpose* (1).] IN WITNESS, &c.

(1) See these powers, *ante*, p. 556.

INDEMNITY.

Rent and
covenants.

No. CCCLXVIII.

A Deed of Indemnity to an Assignor by the Assignee of Leasehold Premises against Payment of Rent and performance of Covenants in the Lease (1).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I (*the assignee*) of, &c. send greeting. WHEREAS by an indenture of demise or lease bearing date the day of , in the year , and made or expressed to be made between (*the lessor*) of, &c. of the one part, and (*the lessee*) of, &c. of the other part, the said (*lessor*), for good and sufficient considerations therein mentioned, demised and leased unto the said (*lessee*) certain messuages or tenements, and premises, situated at in the county of , in the said indenture more particularly described. To HOLD the same with the appurtenances unto the said (*lessee*), his executors, administrators, or assigns, from the day of then last past, for the term of years to be thence next ensuing, at the yearly rent of £ , and subject to the covenants, provisoes, and agreements therein contained on the part of the said (*lessee*), his executors; administrators, and assigns, to be performed or observed, as in and by the said indenture of release (reference being thereto had) will more fully appear. AND WHEREAS I have contracted with the said (*assignor*) for the purchase of the messuages and premises com-

Recital of lease.

Assignment of
lease.

(1) The common way of providing for the vendor's indemnity against the rent and covenants in his lease is to insert a covenant for that purpose in the deed of assignment itself; but as such assignment belongs to and always remains in the possession of the purchaser, the vendor has no certain means where that mode is adopted of availing himself of the benefit of the covenant, but by having at his own expense a counterpart, or by a suit in equity for compelling the production of the original assignment. The proper mode therefore evidently is to provide such indemnity by some instrument to be detached from the purchase deed; this may be either by bond, in the form given *ante*, p. 186, or by a deed of the kind here given.

Indemnity
should be by
separate deed.

INDEMNITY.Rent, and
covenants.Agreement to
indemnify.WITNESS.
The assignee
covenants

to pay the rent.

And perform the
covenants in the
lease.And indemnify
the assignor.

prised in the said indenture of lease, and by an indenture of assignment bearing even date with these presents, and made between the said (*assignor*) of the one part, and me the said (*assignee*) of the other part, he the said (*assignor*) for valuable considerations therein expressed hath assigned or otherwise assured to me the same mesuage or tenement, piece or parcel of ground and premises, for the then and now residue of the said term, subject to the payment of the rent and the performance of the covenants in the said indenture of lease reserved and contained, which on the part of the lessee or tenant of the said premises are to be henceforth paid and performed respectively. AND WHEREAS at the time of the said purchase it was agreed that I should indemnify the said (*assignor*) against the said rent and covenants in the manner hereinafter expressed. Now THEREFORE KNOW YE, that in pursuance of the said agreement and in consideration of the said in part recited indenture of assignment, and of the covenants and agreements therein contained on the part of the said (*assignor*), I the said (*assignee*) for myself, my heirs, executors, and administrators, do hereby covenant, promise, and agree with and to the said (*assignor*), his executors and administrators, in the manner following; (that is to say) that I the said (*assignee*), my executors, administrators, or assigns, shall and will from time to time and at all times hereafter, so long as I or they shall or lawfully may peaceably and quietly have, hold, and enjoy the mesuages and premises described in and assigned or otherwise assured by the hereinbefore in part recited indenture of assignment of even date with these presents, or expressed or intended so to be, as hereinbefore is mentioned, according to the tenor and true intent and meaning of the same indenture against the said (*assignor*), his executors and administrators, and all persons lawfully and rightfully claiming by, from, through, under, or in trust for him or them or any or either of them, shall and will well and truly pay or cause to be paid the yearly rent of £ , and all and every other sum and sums of money which in or by the said in part recited indenture of lease is or are reserved, or made payable, by the lessee or tenant of the said premises, during the now residue or remainder of the said term of years thereby granted; and also well and truly observe and perform all and every the covenants, provisoes, clauses, conditions, and agreements therein contained on his or their part to be performed or observed, for and in respect of the premises thereby demised, or any part thereof; and shall and will protect, defend, keep harmless and indemnified him the said (*assignor*), his executors and administrators, and his and their goods and chattels, and lands

and tenements, from and against the same respectively, and all actions, suits, process, loss, costs, charges, damages, and expenses whatsoever, for or on account of or in relation to the same, or any of them, in any manner howsoever (1). IN WITNESS, &c.

INDEMNITY.

Rent, and
covenants.

(1) It may sometimes be advisable that the purchaser should give the vendor powers of distress and entry on the premises, in case the original rent be in arrear, and the vendor be compelled to pay it; the form of these powers may be as follows:

Powers of distress and entry if rent in arrear.

“ PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, and the said (*assignee*) doth hereby for himself, his heirs, executors, and administrators, covenant, grant, and declare with and to the said (*assignor*), his executors and administrators, in manner following: (that is to say) that if at any time or times during the continuance of the term of years in or by the said hereinbefore in part recited indenture of demise or lease granted, the said yearly rent of £ , in or by the said indenture of lease reserved, shall be in arrear and unpaid by the space of twenty-one days next after any of the said days or times whereon the same is thereby appointed to be paid, and the said (*assignor*), his executors or administrators, shall pay or be obliged or liable to pay the same or any part thereof; or if the said (*assignee*), his executors, administrators, or assigns, shall wilfully fail in the observance or performance of any or either of the covenants or agreements in the same indenture of lease contained, which on the part of the tenant or lessee of the said premises are or ought to be performed or observed; then and in such case and as often as it shall so happen it shall be lawful for the said (*assignor*), his executors and administrators, to enter into and distrain (2) upon the messuage or tenement, piece or parcel of ground, and premises in the said indenture of even date herewith described, and thereby expressed to be assigned to him the said (*assignee*); for all such sum and sums of money, costs, charges, and expenses, as he the said (*assignor*), his executors or administrators, shall have paid, sustained, or been put unto by reason of such default or non-payment as aforesaid, or in anywise relating thereto; and the distress and distresses then and there taken by or by the

(2) This power of distress must be expressly given by the assignee, because having parted with his whole interest he cannot otherwise distrain for want of a reversion in him; — *v. Cooke*, 2 Wils. 375; although it may be stipulated that the assignee shall be tenant to the assignor; *Parmente v. Webber*, 2 Moore, 658.

INDEMNITY.Rent and
covenants.

order of the said (*assignor*), his executors or administrators, empound, detain, and keep until, as well all such sum and sums of money, costs, charges, damages, and expenses as aforesaid, as also all such costs, charges, damages, and expenses as he the said (*assignor*), his executors or administrators, shall pay, sustain, or be put unto during the continuance of any such distress or distresses, shall be fully paid and satisfied; and in default thereof, then in due time to sell and dispose of or otherwise deal with the same according to law; and in such or the like manner as is allowed unto landlords for rent in arrear. AND in case upon any such entry no distress or distresses shall be then found or appear, or in case the same shall not be sufficient, then and in such case and as often as the same shall so happen it shall be lawful for the said (*assignor*), his executors or administrators, to enter (1) into and upon the said premises or any part thereof, in the name of the whole, and to have, hold, retain, and enjoy the same, as of his and their former estate, for all the residue or remainder which shall be then to come and unexpired of or in the said term of years, any thing in the said indenture of assignment of even date herewith contained or implied to the contrary thereof in anywise notwithstanding."

(1) That this condition is valid see Doe dem. Freeman v. Bateman, 2 Barn. and Ald. 168, in which it was holden that an assignor disposing of his whole interest subject to a right of re-entry on the breach of a condition, might re-enter for the condition broken, although he had no reversion nor power of distress.

INDEMNITY.

Rent-Charge
(covenant, &c.).

No. CCCLXIX.

A Deed of Indemnity against a Rent-Charge or other Incumbrance, by Covenant and Power to Distrain (1).

Variations where the Indemnity is against a proportion only of the Rent-Charge.

THIS INDENTURE made the day of in the
year of the reign, &c. and in the year of our Lord 18 , BE-
TWEEN (*the vendor*) of, &c. of the one part, and (*the purchaser*)
of, &c. of the other part. WHEREAS, &c. [*recitals of conveyance of the*
rent-charge.] AND WHEREAS for the purpose of indemnifying the said
(*purchaser*) against the said rent-charge, the said (*vendor*) hath agreed
to enter into such covenants and agreements as hereinafter are con-
tained. NOW THEREFORE THIS INDENTURE WITNESSETH, that in
pursuance of the said agreement, he the said (*vendor*), for himself, his
heirs, executors, and administrators, doth hereby covenant, promise,
agree and declare with and to the said (*purchaser*), his executors, ad-
ministrators and assigns, in the manner following, (that is to say) that
he the said (*vendor*) shall and will, from time to time, and at all times
hereafter (2) well and truly pay or cause to be paid unto the per-

Recitals.

WITNESS.
The vendor
covenants to pay
the rent charge.

(1) In most cases an indemnity of this kind may, without inconve-
nience, be contained in the conveyance of the premises for which it is in-
tended as a protection: viz. in all cases where both deeds must neces-
sarily remain in the custody of the same person. But as it may fre-
quently happen that by a division of the premises into parcels, the in-
demnity may, by the rules of practice, belong to a different person from
one who may have a part of the land, it has been thought right to give
the form of such indemnity by a separate instrument.

Indemnity may
in most cases be
contained in the
purchase deed.

(2) If the purchaser is to pay a proportion of the rent-charge, and
the vendor is to indemnify him against the remainder only, say,

“ So long as the said (*purchaser*), his heirs, executors, admi-
nistrators or assigns, shall pay and discharge and exonerate and in-
demnify the said (*vendor*), his executors, administrators and assigns,
of and from the payment of such part, share or proportion of the said

Purchaser to pay
a proportion of
the rent-charge.

INDEMNITY.Rent-Charge
(*covenant, &c.*).And indemnify
the purchaser.

son or persons who for the time being shall be entitled to receive the same (1), the said yearly rent-charge, or annual sum of £ as and when the same shall be or become payable; and (2) also from time to time and at all times hereafter observe, perform, fulfil and keep all and every the covenants and agreements in the same indenture contained, which on the part and behalf of the said (*vendor*), his heirs, executors, administrators or assigns, are or ought to be observed, performed, fulfilled and kept (3); and also that he the said (*vendor*), his heirs, executors or administrators, shall and will from time to time, and at all times hereafter during

yearly rent-charge, or annual sum of £ , in and by the said hereinbefore in part recited indenture of the day of , reserved and made payable, as according to the true intent and meaning of these presents is payable for or in respect of the premises purchased by and conveyed to the said (*purchaser*) as hereinbefore is mentioned."

Indemnity
against a pro-
portion only of
the rent-charge.

(1) If the purchaser is to pay a proportion of the rent-charge, and the vendor is to indemnify him against the remainder only, say,

"One full part of the said yearly rent-charge, or annual sum of £ , or such other part, share or proportion of the same, as according to the true intent and meaning of these presents, is not payable for or in respect of the messuage or tenement and premises so purchased by and conveyed to the said (*purchaser*) as hereinbefore is mentioned; but for or in respect of other the messuages or tenements and premises, comprised in the said indenture of lease of the day of , which are to remain in the tenure or occupation of the said (*vendor*)."

Covenants to be
performed.Covenants to
be performed by
purchaser.

(2) If there are no covenants to be performed, against which the purchaser wishes to be indemnified, these words may be omitted.

(3) If there are any covenants in the lease or deed creating the rent-charge, which relate exclusively to the premises in the possession of the purchaser, say,

"Other than and except such of the said covenants and agreements as exclusively relate to or concern the messuage or tenement and premises purchased by and conveyed to the said (*purchaser*) as hereinbefore is mentioned, as part or proportion only of the messuages, lands and premises in the said indenture comprised, and which are or ought, according to the true intent and meaning of these presents, to be observed, performed, fulfilled and kept by the said (*purchaser*), his heirs, executors, administrators or assigns."

the subsistence and continuance of the said yearly rent-charge, well and effectually save, defend, keep harmless and indemnified, the said (*purchaser*), his executors, administrators and assigns, and his and their goods and chattels; and also the messuages, lands and hereditaments so sold and conveyed to him the said (*purchaser*), and chargeable with the payment thereof, as hereinbefore is mentioned, of, from and against the said yearly rent-charge or annual sum of £ , and of, from and against all costs, charges, damages and expenses which he or they, or any of them, shall or may pay, suffer, sustain or be subject or liable to, by reason or means of the non-payment of (1) the same or any part thereof. PROVIDED ALWAYS, and the said (*vendor*) doth hereby in manner aforesaid further covenant, promise, grant and agree with and to the said (*purchaser*), his executors, administrators and assigns, that in case any distress or distresses shall at any time or times hereafter be made for (2) the said yearly rent-charge or annual sum of £ , or any part thereof, by the person or persons who for the time being shall be entitled to the same, in or upon the said messuage or tenement and premises so purchased and conveyed to the said (*purchaser*) as hereinbefore is mentioned, and the said (*purchaser*), his executors, administrators or assigns, shall thereby, or otherwise pay or be compelled to pay the same, or any part thereof, then and in such case the sum and sums of money which shall from time to time or at any time be so paid by the said (*purchaser*), his executors, administrators and assigns as aforesaid, shall thereupon and

INDEMNITY.

Rent-Charge
(covenant, &c.).

Power of distress.

(1) If the vendor is to indemnify against a proportion only of the rent-charge, say,

“Of such part of the said yearly rent-charge or annual sum of £ , or the performance of such of the covenants and agreements, by and in the said indenture of the day of reserved and contained, as according to the true intent and meaning of these presents are and ought to be paid, observed and performed by or on the part and behalf of the said (*vendor*), his heirs, executors or administrators.”

(2) If the purchaser is himself to pay a proportion of the rent-charge, say,

“For any greater proportion of the said yearly rent-charge or annual sum of £ , than according to the true intent and meaning of these presents is payable for in respect of the messuage or tenement and premises purchased by and conveyed to the said (*purchaser*), as hereinbefore is mentioned.”

Indemnity
against proportion
only of
rent-charge.Purchaser paying
a proportion
of the rent-
charge.

INDEMNITY.Rent-Charge
(covenant, &c.).

immediately thereafter be charged, and the same are hereby charged and made chargeable upon ALL, &c. and it shall be lawful for the said (*purchaser*), his executors, administrators and assigns, or his or their lawful attorney or attorneys, and he and they are hereby expressly authorized and empowered from time to time, as often as the same shall happen, to enter into and upon ALL and singular the same messuages or tenements and premises hereby charged or chargeable, or expressed or intended to be charged with the payment thereof, and there to distrain for all such sum and sums of money, costs, charges, damages and expenses as he the said (*purchaser*), his executors, administrators or assigns, shall have paid, sustained or been put unto by reason or in consequence of any such distress or distresses being so made in or upon the said messuage or tenement and premises so purchased by and conveyed to him the said (*purchaser*) as aforesaid, or the said distress or distresses so to be made by him the said (*purchaser*), his executors, administrators or assigns, upon the premises of the said (*vendor*), or otherwise by reason of the non-payment of the said yearly rent-charge or annual sum of £ , and the goods, chattels or other distrainable property and effects which shall be then and there found, or which shall have been thence unlawfully removed, to empound, detain and keep; and in due time after such distress or distresses shall be so made, to cause the same goods, chattels and effects to be appraised and sold, or otherwise disposed of according to law, in like manner as in the case of distresses made for rent reserved upon leases or demises for years, to and for the intent and purpose that the said (*purchaser*), his executors, administrators and assigns, may thereby be fully paid and satisfied the same sum and sums of money, costs, charges, damages and expenses, and every part thereof. IN WITNESS, &c.

INDEMNITY.

Rent-Charge
(demise).

No. CCCLXX.

A Deed of Indemnity against a Rent-Charge or other Incumbrance, by Demise of Freehold Lands to a Trustee (1).

Variations where it is the conveyance of the fee. Also where the premises are Leasehold. Where a Rent-Charge is created as an indemnity.

THIS INDENTURE made the day of [in the year of the reign, &c. and*] in the year of our Lord 18 ,
BETWEEN (*the vendor*) of, &c. of the first part, (*the purchaser*) Parties.
of, &c. of the second part, and (*the trustee*) of, &c. a trustee
named and appointed for the purposes hereinafter mentioned, of the
third part. WHEREAS (2) the said (*purchaser*) hath lately con- Recital of pur-
chase.
tracted with the said (*vendor*), for the absolute purchase of certain
lands and hereditaments situated at in the county of

(1) Where an estate is sold liable to the payment of a rent-charge or other incumbrances affecting it, there are several methods adopted to indemnify the purchaser against them; the first and the most secure method is that given in the form in the text, namely, to demise other premises to a trustee, upon proper trusts for the purpose; another mode is to invest part of the purchase-money in the funds in the names of trustees, which is frequently adopted where the incumbrances are not likely to be of long continuance, as against the claim of a minor, a life annuity, or the like; and of which a form has been given, *ante*, p. 552. But if the circumstances of the case will not admit of either of these modes, then either a bond or other personal security may be given; for which see *ante*, p. 122: or a power of distress may be given upon premises in the occupation of the vendor; *ante*, pp. 571. 573. Different modes
of indemnity.

* If brevity be particularly desired, the words within brackets may be omitted. Brevity.

(2) If the premises be leasehold recite here the lease, as *ante*, p. Leaseholds.
569.

INDEMNITY.Rent-Charge
(demise).Of lands being
liable to pay-
ment of rent
charge.WITNESS.
The vendor de-
mises

Parcels.

. AND WHEREAS by indentures (1) of lease and release, the lease bearing date the day next before the date of the release, and the release bearing or intended to bear even date with these presents, and made or expressed to be made between, &c. the said lands and hereditaments have been conveyed and assured unto and to the use of the said (*purchaser*), his heirs and assigns, for ever. AND WHEREAS the said lands and hereditaments are subject and liable (2) to the payment of a yearly rent-charge or annual sum of £ , under or by virtue of an indenture bearing date the day of , and made between, &c. AND WHEREAS for indemnifying the said (*purchaser*), and also the said lands and hereditaments, from and against the payment of the said yearly rent-charge, the said (*vendor*) hath agreed to demise the several messuages, lands, and hereditaments hereinafter described unto the said (*trustee*), for the term and upon the trusts hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and for effectuating the purposes aforesaid, [and also for and in consideration of the sum of 10s. of lawful money of Eng-land, to the said (*vendor*) in hand well and truly paid by the said (*trustees*), at or before the execution of these presents, the receipt whereof is hereby acknowledged,] HE the said (*vendor*) HATH granted (3), bargained, sold, and demised (4), and by these presents DOTH grant, bargain, sell, demise, and confirm unto the said (*trustee*), his executors, administrators, and assigns, ALL, &c. or howso- ever otherwise the said messuages, lands, tenements, hereditaments,

Leaseholds.

(1) If the premises conveyed to the purchaser be leasehold, say,
"AND WHEREAS by an indenture of assignment bearing or in- tended to bear even date with these presents, and made or expressed to be made between, &c. the said messuages, lands, and premises, were assigned unto the said (*purchaser*), his executors, administra- tors, and assigns, for the residue of the term of years then to come therein."

Estate in ven-
dor and trustee.
Leaseholds.

(2) Recite here the incumbrances against which the indemnity is given.

(3) If the premises be leasehold they must be assigned to the trustee for the residue of the term, the form of this assignment will be similar to that given *ante*, p. 569.

Parcels.

(4) Insert here an accurate description of the lands intended to be de- mised, by their ancient and present name, situation, tenancy, &c.

If the fee of the premises is conveyed, say, "aliened and released," instead of demised.

INDEMNITY.Rent-Charge
(demise).

and premises, or any of them or any part thereof, now are or is or heretofore were or was situated, tenanted, called, known, described, or distinguished, together with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber, and other trees, woods, underwoods, and the ground and soil thereof; mines, quarries, rights, and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed] (1), and all and every the yearly and other rents, issues, and proceeds of the same, and of every part thereof; [And all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the same hereditaments and premises, and every or any of them, for and during the said term, together with all deeds, muniments, writings, and evidences whatsoever, which in anywise relate to the same premises or any part thereof, and which now are or hereafter during the said term shall or may be in the possession, custody, or lawful power of the said (*vendor*), his heirs or assigns, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity.] To HAVE AND TO HOLD (2) the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore described and hereby granted and demised, or mentioned or intended so to be, with their and every of their appurtenances unto the said (*trustee*), his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the full and complete term or period of 500 years thence next ensuing, without impeachment of or for any

To HOLD to
trustee for 500
years.

(1) If the fee be conveyed, make the usual reference to the bargain and sale for a year, and add,

“ And the reversion and reversions, remainder and remainders, of and in the said hereditaments.”

(2) If the fee be conveyed, see *post*. Rider B. p. 587.

INDEMNITY.

Rent-Charge
(demise).

Upon trust for
vendor until de-
mand made
upon purchaser.

Then upon trust
thereout, or by
sale, &c. to pay
incumbrance.

manner of waste, other than for wilful or malicious waste, BUT NEVERTHELESS upon the trusts and to and for the several intents and purposes, and under and subject to the several provisoes, declarations, and agreements hereinafter declared or expressed concerning the same; (that is to say), UPON TRUST (1) to permit and suffer and authorize and empower the said (*vendor*), his heirs and assigns, to receive and take the rents, issues, and profits of all and singular the same hereditaments and premises and of every part and parcel thereof, to and for his and their own use and benefit, until demand shall be made of or against the said (*purchaser*), his heirs or assigns, or the premises so purchased by him as aforesaid, for or in respect of the said yearly rent-charge or annual sum of £ , or some part or proportion thereof, under or by virtue of the said hereinbefore in part recited indenture of the day of . AND UPON THIS FURTHER TRUST, that in case any such demand shall be made, then and in such case and from time to time, as often as the same shall happen, he the said (*trustee*), his executors, administrators, and assigns, shall and do immediately thereupon or at any time thereafter, by and out of the rents, issues, and profits of all and singular or any part of the said hereditaments and premises, or by bringing actions against all and every or any of the present or future tenants thereof, or by making entries upon the said premises, or by demising, leasing, or mortgaging, or by absolutely selling or otherwise disposing of the same or any part thereof, either by public or private sale or contract for all or any part of the said term of 500 years, and by executing all necessary and proper deeds and assurances requisite for that purpose, or by all and every or any one or more of the said ways and means, or by any other lawful ways and means whatsoever, at his or their discretion, to raise and obtain such sum and sums of money as he or they shall think proper and sufficient, or as can be obtained for or upon the same, and thereby or thereout pay and satisfy (2) the said

Brevity.

Judgments, &c.

(1) For the sake of conciseness these trusts may be varied, as *post*. Rider A. p. 586.

(2) If the incumbrances consist of judgments which have been obtained against the vendor, or the premises are charged with the payment of a sum of money in gross, say, *

“ To pay and satisfy and discharge as well the said debt or sum of £ , or other sum or sums of money which shall or may be recovered upon or by virtue of the said hereinbefore in part recited judgments, or any other judgment or judgments already or at any time hereafter to be obtained or entered up against the said (*vendor*)

yearly rent-charge or annual sum of £ , by the said in part recited indenture of lease reserved or made payable, or so much thereof for which any such demand as aforesaid shall be made beyond the said yearly rent or sum so apportioned to and agreed to be paid by the said (*purchaser*) for or in respect of the premises so by him purchased as aforesaid, together with all such sum and sums of money, loss, costs, charges, damages, and expenses occasioned by the non-payment thereof, as he the said (*trustee*), his executors, administrators, or assigns, shall have paid, sustained, expended, or been put unto in or by bringing or prosecuting any such action or actions, or by making any such entry or entries, or collecting or receiving any such rent or profits, or in making and completing any such demise, lease, mortgage, or disposition of the said premises, or otherwise howsoever, in the execution of the trusts of these presents, or as he the said (*purchaser*), his heirs and assigns, shall have sustained or been put unto or be liable to pay by reason of any such demise as aforesaid or otherwise on account of the non-payment of the said yearly rent-charge or annual sum of £ , except only the said apportioned rent or sum of £ , and do and shall pay, apply, and dispose of the monies arising by any of the means aforesaid in payment and satisfaction thereof, and indemnifying and saving harmless the said (*purchaser*), his executors, and his and their goods and lands and tenements against the same accordingly. AND from and after full payment, satisfaction, and discharge of such sum or sums of money, costs, charges, damages, and expenses as aforesaid, then if the same shall have been satisfied and paid by or out of the rents, issues, and profits of the said premises, UPON TRUST that he the said (*trustee*), his executors, administrators, and assigns, do and shall permit and suffer and authorise and empower the said (*vendor*), his heirs and assigns, to receive and retain or otherwise well and truly pay unto him and them all and every the residue and surplus of the same rents, issues, and profits, to and for his and their own proper use and benefit. BUT in case the said sum or sums of money aforesaid, or any of them or any part thereof, shall have been raised

 INDEMNITY.

Rent-Charge
(demise).

And pay surplus
of rents and
profits to vendor.

In case of sale,
&c. money to be
invested in the
Funds.

and his heirs, and be chargeable upon or can or shall in anywise affect the said several messuages, lands, tenements, and hereditaments, so sold and conveyed to the said (*purchaser*), or any part thereof, together with all such sum and sums of money, loss, costs," &c. as above.

INDEMNITY.Rent-Charge
(demise).

and paid by any sale, mortgage, or other disposition of the said hereditaments and premises or any part thereof, under or by virtue of the trusts aforesaid, then and in such case UPON TRUST, after full payment and satisfaction thereof, and of all such costs, charges, and expenses as aforesaid, that he the said (*trustee*), his executors, administrators, and assigns, do and shall forthwith invest the residue and surplus of the money to arise therefrom or thereby in the purchase of three per cent. Consolidated Bank Annuities, or upon real security, in the name of him the said (*trustee*), his executors, administrators, and assigns, and of one or more person or persons to be named by the said (*purchaser*) with the approbation of the said (*vendor*), upon proper and sufficient trusts, to be declared in writing under the hands and seals of the said parties, to secure and keep down all future arrears and other payments to grow or become due for or in respect of the same yearly rent-charge or annual sum of £ , beyond the said apportioned rent or sum of £ , and to pay and apply the same from time to time accordingly; and in the mean time and until a good and sufficient declaration in writing of the trusts thereof shall be duly made and executed, it is hereby declared and agreed by and between the said parties to these presents, that the persons in whose names the same shall be so invested, and the survivors and survivor of them, and the executors and administrators of the survivor of them, and their and his assigns, shall stand possessed of and interested in the said trust monies, funds, and securities upon trust, by and out of the dividends, interest, and yearly proceeds thereof, if sufficient, and in case such yearly interests, dividends, and proceeds shall be insufficient, then by selling and disposing of the principal sum so to be invested or a sufficient part thereof, and of the funds and securities for the same, to pay the said yearly rent-charge or annual sum of £ , or such other sum or sums of money as shall be or at any time or times and from time to time become due and payable, or be demanded of or against him the said (*purchaser*), his heirs or assigns, together with all reasonable costs, charges, and expenses thereby incurred or occasioned; and from and after full payment and satisfaction thereof, IN TRUST to pay and apply the residue and surplus of the said dividends and interest, or of so much thereof as for the time being shall not have been sold or disposed of for the purposes aforesaid, unto the said (*vendor*), his executors, administrators, and assigns, for his and their own use and benefit. AND from and after the cessation or extinguishment of the said yearly rent-charge or annual sum of £ , by any means whatsoever, and full payment and satisfaction of all arrears,

costs, and charges as aforesaid, then to transfer the principal money and the funds or securities upon which the same shall be invested, or so much thereof as shall not have been applied or disposed of for all or any of the purposes aforesaid, unto the said (*vendor*), his executors, administrators, or assigns, to and for his and their own proper use and benefit. AND it is hereby provided, declared, and agreed by and between the parties to these presents, and the said (*vendor*) doth hereby expressly declare and agree that all and every the contracts and agreements and sales, mortgages, leases, acts, matters, and things, which shall be made or entered into, and all conveyances and assurances which shall be executed by the said (*trustee*), his executors, administrators, or assigns, in pursuance and execution of the trusts aforesaid, of or concerning all or any of the several messuages, lands, tenements, hereditaments, and premises hereby demised, or mentioned or intended so to be, shall be good, valid, and efficient to all intents and purposes whatsoever, and binding upon the said (*vendor*), his heirs, executors, and administrators, although he or they shall not execute the same, or join in or consent thereto other than as is expressed by these presents, and in like manner as if the same had been entered into, made, and executed by him the said (*vendor*), and these presents had not been made. AND that the receipt and receipts of the said (*trustee*), his executors, administrators, and assigns, shall from time to time and at all times be a good and sufficient discharge, and good and sufficient discharges, to any and every purchaser or purchasers, mortgagee or mortgagees, or tenant or tenants of the said messuages, lands, tenements, hereditaments, and premises or any part thereof, or to his or their executors, administrators, or assigns, for such sum or sums as shall therein be acknowledged or expressed to be received, and wholly exonerate him and them from seeing to the application thereof or from enquiring into the expediency or necessity of any such sale, mortgage, or other disposition of the same premises. AND that no such purchaser or purchasers, mortgagee or mortgagees, or his or their executors or administrators, or other the person or persons who shall pay to the said (*trustee*), his executors, administrators, or assigns, any purchase, mortgage, or consideration money, or any rents, issues, or proceeds of or for the same messuages, lands, tenements, hereditaments, and premises, in pursuance of the trusts hereinbefore expressed or any or either of them, shall afterwards be obliged to see to the application thereof, or be answerable or accountable for the misapplication or non-application thereof, or to enquire into the reason or necessity of any such sale, mortgage, or other disposition of the said premises.

INDEMNITY.

Rent-Charge
(*demise*).Contracts of
trustee to bind
vendor.Trustee's re-
ceipt sufficient
discharge.

INDEMNITY.Rent-Charge
(demise).

Subject to the trusts of the deed, the term to attend the inheritance.

Covenant by vendor, that he hath right to demise.

That the trustee shall quietly enjoy.

Free from incumbrances.

PROVIDED ALWAYS, nevertheless, and it is hereby expressly declared and agreed by and between the said parties to these presents, that subject and without prejudice to the trusts and purposes hereinbefore expressed, he the said (*trustee*), his executors, administrators, and assigns, shall stand and be possessed of or interested in the said messuages, lands, tenements, hereditaments, and premises comprised in the said term of 500 years, for and during the residue for the time being of the same term, in trust to attend the reversion and inheritance of the said premises, and in order to protect the same from all present charges and incumbrances, if any there be. AND, &c. [*covenant by vendor to pay and indemnify against the rent-charge* (1).] AND the said (*vendor*) for himself, his heirs, executors, and administrators, DOth covenant, promise, and agree with and to the said (*trustee*), his executors, administrators, and assigns, by these presents, in manner following, (that is to say,) that he the said (*vendor*) now hath good right, full power, and lawful and absolute authority, both at law and in equity, to grant and demise the said messuages, lands, tenements, hereditaments, and premises hereinbefore mentioned, or intended so to be, with their appurtenances, unto the said (*trustee*), his executors, administrators, and assigns, for and during the said term of 500 years, upon the trusts and to and for the intents and purposes hereinbefore declared or expressed concerning the same. AND that it shall and will be lawful for the said (*trustee*), his executors, administrators, and assigns, from time to time and at all times during the continuance of the said term of 500 years hereby created, peaceably and quietly to enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, and to receive and retain the rents, issues, profits, and proceeds which shall henceforth arise or be payable for or in respect thereof, upon the trusts and to and for the intents and purposes hereinbefore declared concerning the same, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge or interest, at law or in equity, in, to, out of, upon, or respecting the said hereditaments and premises or any part thereof, from, through, under, or in trust for him, them, or any of them, or any of the ancestors of the said (*vendor*). AND that free and clear and clearly and absolutely discharged and exonerated, or otherwise

(1) See *ante*, p. 573.

INDEMNITY.Rent-Charge
(demise).Further assur-
ance.

by and at the expense of the said (*vendor*), his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or suffered by or with the procurement or privity of the said (*vendor*) or any of his ancestors, or any person or persons now or hereafter rightfully claiming or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any of them. AND MOREOVER that he the said (*vendor*) and his heirs, and all and every person or persons now or at any time hereafter rightfully claiming or having title to claim any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted and demised, or mentioned or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them respectively, shall and will from time to time and at all times hereafter, upon every reasonable request of him the said (*trustee*), his executors, administrators, or assigns, but at the expense of the said (*vendor*), his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected with all proper dispatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, for the further, better, more perfectly, fully, and absolutely or satisfactorily demising or assuring the same messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof, with their appurtenances, unto the said (*trustee*), his executors, administrators, and assigns, or unto any purchaser, mortgagee, lessee, or other person or persons whomsoever, for and during all the residue or remainder which shall be then to come and unexpired of the said term of 500 years therein, as by the said (*trustee*), his executors, administrators, or assigns, shall be reasonably advised and required. IN WITNESS, &c.

INDEMNITY.Rent-Charge
(demise).

Rider A.

Variation to the next preceding Precedent (see ante, p. 580, n. (1), when conciseness is required.

UPON TRUST and to the intent that the hereditaments comprised in the said term of years, shall and may save, defend, keep harmless and indemnified the hereditaments hereby demised for sale as aforesaid, and also the respective purchasers of the same, their respective heirs, executors, administrators and assigns, from and against all and every the subsisting annuities under the said will, &c. [as the case may be] and from and against all actions, suits, causes of action and suit, claims and demands whatsoever, for or in respect of the same annuities, or any of them or any part thereof respectively: AND for that end, intent and purpose, it is hereby further declared and agreed, that if at any time hereafter any claim or demand whatsoever shall be made upon the said hereditaments, or any part thereof, or the said purchasers or any or either of them, or his or their heirs, executors, administrators or assigns, or any other person or persons who shall or may have or be entitled to any estate or interest of or in any of the said hereditaments which shall have been so sold, or his or their heirs, executors, administrators or assigns, and he, they or any or either of them shall by reason or in consequence of any such claim or demand pay or be liable to pay any sum or sums of money, or sustain any costs, charges, damages or expences whatsoever, then and in any such case and so often as the same shall happen, the said (*trustee*), his executors, administrators or assigns, shall by and out of the rents, issues and profits of the hereditaments comprised of the said term of years, or by bringing actions against the tenants or occupiers of the same hereditaments or any of them, or by such other ways or means as he the said (*trustee*), his executors, administrators or assigns, shall be advised and deem proper or expedient, levy and raise such sum or sums of money as the case may require, or as he or they shall think fit and proper, and pay and apply the money so to be raised, or a competent part thereof, in satisfaction and discharge of the said sum or sums of money, costs, charges, damages and expences accordingly.

INDEMNITY.Rent-Charge
(demise).

Rider B.

Variation in the preceding Precedent (see ante, p. 579, n. (2.)) where the Fee is conveyed as an Indemnity.

TO HAVE and to hold the several capital and other messuages, lands, tenements, and all other the hereditaments and premises hereby released or intended so to be, and every part thereof unto the said (*purchaser or other grantee of the premises*), his heirs and assigns, to the only use and behoof of him the said (*purchaser, &c.*) his heirs and assigns, for ever, but by way of indemnity only and as a protection and security to him and them from or against or in respect of any judgment debts entered of record against the said (*vendor or other grantor of the premises*), or any other charges or incumbrances now affecting the said hereditaments, and all actions, suits, extents, executions, costs, charges, damages, expenses, claims and demands whatsoever, for or on account of such judgments, charges or incumbrances or any of them. AND, &c. [*add powers of sale, &c. (1)*]. AND as to the same hereditaments, (subject to the trusts and purposes aforesaid,) or such of them as shall remain after answering the same, and also the residue or surplus of the monies arising from any sale, mortgage or other disposition thereof as aforesaid, after the said purposes shall be fully satisfied (and in the mean time subject thereto), IN TRUST for the said (*vendor, &c.*) his heirs and assigns [*or to uses to bar dower, if so wished*] to such other uses upon and for such trusts, interests and purposes, and with, under and subject to such powers, provisos and declarations as the said (*purchaser, &c.*) by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more witnesses, shall from time to time direct, limit or appoint: and in the mean time and until and also in default of any such direction, limitation or appointment, and so far as the same, if incomplete, shall not extend, to the use of the said (*purchaser, &c.*) and his assigns during the term of his life, without impeachment of waste, and after the determination of that estate by any means in

(1) See ante, p. 580.

INDEMNITY.Rent-Charge
(demise).Owner's right to
lease or sell.Covenant by
purchaser to
concur in sales,
&c.

his lifetime, To THE USE of the said (*trustee*) and his heirs [*or executors and administrators*] during the life of the said (*purchaser, &c.*), IN TRUST nevertheless for him the said (*purchaser, &c.*) and his assigns, and from and after the determination of the estate so hereby limited in use to the said (*trustee*) as aforesaid, to the use and behoof of him the said (*purchaser, &c.*) his heirs and assigns, for ever. AND, &c. [*covenants for title, &c.*](1). PROVIDED ALWAYS and it is hereby declared and agreed by and between the parties hereto, that nothing herein contained shall prevent or impede the said (*vendor, &c.*), his heirs or assigns, in or from granting or demising for any term or number of years or for any life or lives, and either with or without any fine, premium or foregift, or other consideration, or in or from contracting for the sale or mortgage of all or any part of the messuages, lands, and hereditaments hereinbefore limited in use to the said (*purchaser, &c.*) in trust and for such indemnity as aforesaid, or in or from selling timber or opening and working mines, pits or quarries, and disposing of the same or the produce thereof or any part thereof, or in or from raising any sum or sums of money by any other ways or means whatsoever, upon or by means of the same messuages, lands and hereditaments, or any part thereof, so as that the money to be raised or obtained by any of the said means be applied in or towards paying and satisfying such judgments, debts of record or other charges, or incumbrances which shall then affect the said hereditaments or any part thereof AND the said (*purchaser, &c.*) for himself, his heirs, executors and administrators, doth hereby covenant, declare and agree with and to him the said (*vendor, &c.*) his heirs and assigns, that he the said (*purchaser, &c.*) his heirs and assigns, shall and will from time to time when he or they shall be thereunto required, join and concur in any act, deed, matter or thing which shall or may be, or by counsel in the law be deemed necessary for enabling him the said (*vendor, &c.*) his heirs or assigns, to effect or perfect any of the ends or purposes last aforesaid. AND also at the costs and charges in all things of him the said (*vendor, &c.*) his heirs or assigns, when and as often as any such judgment, debt, charge or incumbrance as aforesaid, shall be paid and satisfied or otherwise released or vacated, shall and will convey and assure unto him or them, or as he or they shall direct or appoint, so much of the said messuages, lands and hereditaments as shall be of equal value with any such judgment debt, or other charge or incumbrance, as shall be so paid, satisfied, released or vacated. IN WITNESS, &c.

Covenants.

(1) See ante, p. 267. 583.

INDEMNITY.

Rent-Charge.

No. CCCLXXI.

**A Grant of a perpetual Rent-Charge or Fee-farm Rent out of Premises to Indemnify other Premises conveyed to a Purchaser or Mortgagee against a like Rent-Charge issuing thereout.*

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , BETWEEN the (*grantor*) of, &c. of the first part, (*the purchaser or mortgagee*) of, &c. of the second part, (*trustee of the rent-charge*) of, &c. of the third part, and (*trustee of a term to be created*) of, &c. of the fourth part. WHEREAS, &c. [*recite the conveyance to the purchaser or mortgagee of the premises to be indemnified and of their being subject to the rent-charge.*] AND WHEREAS previously to the execution of the said conveyance, it was agreed that the said (*grantee*) should be indemnified against the payment of the said yearly rent-charge of £ , by the grant of a like yearly rent-charge of £ , to be issuing out of the hereditaments herein-after described. NOW THIS INDENTURE WITNESSETH, that for the considerations in the said in part recited indenture expressed, [and also for and in consideration of the sum of 10s. of lawful English money, to the said (*grantor*) in hand paid by the said (*grantee*) at or before the execution of these presents, the receipt whereof is hereby acknowledged, &c.] he the said (*grantor*) at the request and by the direction of the said (*grantee*), testified by his being a party and executing these presents, HATH given and granted, and by these presents BOTH give and grant unto the said (*rent-trustee*), his heirs and assigns, one perpetual annuity, yearly rent-charge, or annual sum of £ of lawful current money of the United Kingdom of Great Britain and Ireland, to be issuing, growing, payable, had, received and taken by and out of ALL that, &c. and by and out of all houses, out-houses, gardens or orchards, ways, waters, easements, profits, commons, commodities, advowsons, emoluments and appurtenants whatsoever to the said messuages, lands and hereditaments belonging or in anywise ap-

WITNESS.
Grantor of the
premises grants
a rent-charge
out of other
premises.

INDENTURE.Rent-Charge.

To HOLD to the
trustee in fee.

FURTHER
WITNESS.
Grantor de-
mises the pre-
mises to another
trustee.

pertaining. TO HAVE AND TO HOLD, receive, perceive, take and enjoy the said annuity, yearly rent-charge or annual sum of £ hereby granted or otherwise assured or intended so to be from henceforth unto and by him the said (*rent-trustee*), his heirs and assigns, for ever. AND the said (*grantor*) doth hereby further grant and agree that the same annuity or yearly rent-charge shall be paid and payable at or in the common dining-hall of Lincoln's Inn, in the County of Middlesex, by equal quarterly payments on the day of the day of the day of and the day of in every year, by even and equal portions, without any deduction or abatement out of the same, for or by reason of any present or future taxes, charges, assessments, payments or other matter, cause or things whatsoever. AND THIS INDENTURE FURTHER WITNESSETH, &c. [*demise of premises for a term to another trustee* (1),] but nevertheless upon and for the trusts, intents and purposes, and subject to the provisos and agreements hereinafter contained concerning the same. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, that the grant hereinbefore made to the said (*term-trustee*), his heirs and assigns, of the said yearly rent-charge, or sum of £ hereby granted, and the demise hereinbefore made of the messuage, lands and hereditaments hereinbefore described, for the term of years as aforesaid, are respectively made to and for the end, intent and purpose of saving harmless and keeping indemnified the said (*grantee*), his heirs and assigns, and his and their respective lands and tenements, goods and chattels, and particularly the lands, tenements and hereditaments so conveyed and assured to him the said (*grantee*), his heirs and assigns, as aforesaid, of, from and against the aforesaid perpetual annuity, yearly rent-charge, or sum of £ payable to the said (), his heirs and assigns, as aforesaid, and all arrears thereof, and all actions, suits, costs, charges, damages and expenses which may be commenced or prosecuted, paid, sustained or borne against or by the said (*grantee*), his heirs or assigns, for or by reason or means or on account of the same last mentioned annuity, yearly rent-charge, or sum of £ AND subject to such indemnity, then IN TRUST for the said (*grantee*), his heirs, executors, administrators or assigns, AND that notwithstanding anything hereinbefore contained or implied to the contrary, it shall not be lawful to or for the said

(1) See *ante*, p. 578.

(*rent-trustee*), his heirs or assigns, nor to or for the said (*term-trustee*), his executors, administrators or assigns, under or by virtue of these presents, to levy and raise all or any part of the said annuity, yearly rent-charge or sum of £ hereby granted until the said (*grantee*), his heirs or assigns, shall by due course of law be compelled to pay the same, or some part thereof, and the same shall be lawfully levied upon the lands, tenements and hereditaments comprised in the said indentures of release of even date herewith or some part or parts thereof. PROVIDED ALWAYS, that in case the annuity, yearly rent-charge or sum of £ payable to the said his heirs and assigns, as aforesaid, or any part thereof, shall at any time or times hereafter be so paid or levied as hereinbefore mentioned, then and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the said (*rent-trustee*), his heirs and assigns, into and upon the said messuages, lands and hereditaments lastly hereinbefore particularly described, or into and upon any part thereof, to enter and distrain for the said annuity or yearly sum of £ hereby granted and all arrears thereof, and the distress and distresses then and there found to deal with according to law, until he the said (*rent-trustee*), his heirs and assigns, shall be fully paid and satisfied the said annuity, yearly rent-charge or sum of £ hereby granted and all arrears thereof, and all costs, charges and expenses occasioned by the non-payment thereof, at the days and times in that behalf before mentioned. PROVIDED ALWAYS, that in the like case and cases it shall be lawful for the said (*rent-trustee*), his heirs and assigns, into and upon the said messuages, lands and hereditaments, or into and upon any part thereof, in the name of the whole to enter, and the same to have, hold and enjoy, and the rents, issues and profits thereof, and of every part thereof, to receive and take to and for his and their own use and benefit, until he or they shall therewith or thereby or otherwise be fully paid and satisfied, the said annuity, yearly rent-charge or sum of £ hereby granted, and all arrears thereof, and also so much of the said annuity or rent-charge as shall incur and grow due during such time as he the said (*rent-trustee*), his heirs or assigns, shall continue in possession of the premises after such entries as aforesaid, and also all such costs, charges, damages and expenses as shall be occasioned by non-payment thereof, or of any part thereof; at the days and times as aforesaid. AND it is hereby declared and agreed by and between the parties hereto, that the said messuages, lands and hereditaments are so demised to the said (*term-trustee*) as aforesaid, UPON THE TRUSTS and under and subject to the proviso and agreement hereinafter

INDEMNITY.

Rent-Charge.

Power of distress.

Power of entry.

Trusts of the term.

Permit grantor to receive rents

INDEMNITY.Rent-Charge.

till default in
payment.

Then to raise
the same.

Grantor to re-
ceive surplus.

mentioned, expressed and declared of and concerning the same, (that is to say) IN TRUST to permit and suffer the said (*grantor*), his heirs and assigns, to receive and take the rents and profits of the said messuages, &c. hereby demised, and of every of them and of every part thereof, to and for his and their own use and benefit, until some lawful demand shall be made upon the said (*grantee*), his heirs or assigns, or the said hereditaments comprised in the said indenture of even date herewith, for default in payment of the said annuity, yearly rent-charge or sum of £ so payable to the said (), as aforesaid, or some part thereof, AND upon this further trust that in case any such demand shall be made of the same annuity, yearly rent-charge or sum of £ or any part thereof, then and so often it shall be lawful for the said (*term-trustee*), his executors, administrators and assigns, from time to time, by and out of the rents, issues, profits and produce of the said messuages, &c. hereby demised, or by demising, leasing or mortgaging the same or any part thereof, or all or any part of the said term of years, or by such other ways or means as to him the said (*term-trustee*), his executors, administrators or assigns, shall seem meet, to raise and levy such sum or sums of money as shall be sufficient from time to time to pay and satisfy the said annuity, yearly rent-charge or sum of £ or so much thereof as shall from time to time be in arrear and unpaid, together also with all costs, charges, damages and expenses as he the said (*grantee*), his heirs or assigns, or the said (*term-trustee*), his executors, administrators or assigns, or any of them, shall sustain, expend or be put unto, for or by reason of the non-payment of the same annuity or rent-charge at the days and times, and in manner hereinbefore in that behalf mentioned, and thereupon to pay, apply and dispose of the same money accordingly. AND upon further trust to permit and suffer the said (*grantor*), his heirs and assigns, to receive and take the residue and overplus of the rents, issues and profits of the premises hereby demised, over and above so much thereof as shall be sufficient from time to time to pay and satisfy the said annuity, yearly rent-charge or sum of £ so payable to the () as aforesaid, or so much thereof as shall be from time to time sufficient to pay and satisfy the same, and all costs, charges, damages and expenses attending the recovery thereof, and to pay and apply the monies accordingly. AND, &c. [covenant by grantor for title, &c. (1)]. Pro-

VIDED LASTLY, and it is hereby declared and agreed by and between the parties to these presents, that if the said (*grantor*), his heirs or assigns, shall at any time hereafter at his or their own costs and charges to the satisfaction of the counsel in the law of the said (*grantee*), his heirs or assigns, and by good and sufficient conveyances and assurances effectually grant and assure to the said (*rent-trustee*), his heirs and assigns, in lieu of the said yearly rent-charge or sum of £ hereby granted, one like yearly rent-charge or sum of £ to be issuing and payable out of any other messuages, lands, tenements or hereditaments, free from incumbrances, of the yearly value of £ clear of reprises with the demise of a like term of years therein, to the said (*term-trustee*), his executors, administrators and assigns, for better securing the said yearly rent-charge or sum of £ so to be substituted as aforesaid, and which yearly rent-charge or sum of £ and term of years so to be substituted, shall be to and for the like end, intent and purpose, upon the like trusts, and subject to the like provisos and conditions, as are in these presents expressed and declared of and concerning the said yearly rent-charge or sum of £ hereby granted, and the said term of years hereby demised; or in case the said (), his heirs or assigns, shall at any time hereafter, at his and their own costs and charges, and to the like satisfaction of the counsel of the said (*grantor*), his heirs and assigns, procure for the said (*rent-trustee*), his heirs or assigns, or the person entitled to the said rent-charge of £ good and effectual releases to the said (*grantor*), his heirs and assigns, for and in respect of the said rent-charge of £ and every part thereof, then and in either of such cases, from and immediately after the execution of such conveyance or assurance or release respectively, and the delivery thereof unto the said (*grantee*), his heirs or assigns, this present indenture and the grant, bargain and sale and the demise hereby made, and every covenant, proviso, clause, article, matter and thing hereinbefore contained shall cease, determine and be absolutely void to all intents and purposes whatsoever, any thing herein contained to the contrary in anywise notwithstanding. IN WITNESS, &c.

INDEMNITY.Rent-Charge.

If grantor grant another rent-charge in lieu of the present, this to be void.

INDENTURE.

Surety
(annuity).

No. CCCLXXII.

**Deed of Indemnity to a Surety for an Annuitant by declaration of Trust of the Premises chargeable with the Annuity.*

WITNESS.
Declaration of
trust (subject to
annuity) to in-
demnify surety.

Power of sale.

THIS INDENTURE made the day of in the year, &c. and in the year of our Lord 18 , between, &c. WHEREAS, &c. [*recite the annuity deed*]. NOW THIS INDENTURE WITNESSETH, that he the said (*grantor*) DOth hereby declare and direct that the said (*surety*) and his heirs shall stand and be possessed of and interested in the messuages, tenements, dwelling-houses, buildings and hereditaments conveyed to him by the said in part recited indenture of, &c. (subject only to the said annuity of £ granted to the said (*grantee*), and charged upon the said messuages or dwelling-houses, and to powers of distress and entry limited to the said (*grantee*), his executors, administrators and assigns, to enable him and them to compel payment of the said annuity and to the term of years so vested in the said (*trustee*) upon trusts for securing the same annuity.) IN TRUST to indemnify himself the said (*surety*), his heirs, executors and administrators, against any loss or damage which he or they shall or may sustain by reason or consequence of his becoming surety for the said annuity of £ granted to the said (*grantee*). AND for which purpose it is hereby agreed and declared that in case the said (*surety*), his heirs, executors or administrators shall at any time hereafter be required to pay, and shall actually pay any sum or sums of money in or towards payment of the said annuity of £ , or shall incur any costs, charges or expenses whatsoever, by reason or in consequence of his having become surety for the said (*grantor*), he the said (*surety*) and his heirs, shall or lawfully may absolutely sell and dispose of the fee-simple and inheritance of all or any part of the said messuages and hereditaments, either by public auction or by private contract, and upon such terms as the said (*surety*) and his heirs shall think reasonable, and convey and assure the hereditaments,

which shall be so sold to the purchaser or purchasers thereof, or as he or they should direct. AND the said (*grantor*) DOth hereby declare and direct that all contracts which shall be entered into, and all conveyances and assurances which shall be executed by said (*surety*) or his heirs, for the purpose of effecting such sale or sales shall be valid and effectual in the law to all intents and purposes whatsoever. AND that it shall not be incumbent upon the purchaser or purchasers of the said hereditaments or any part thereof to enquire or ascertain whether previously to such sale the said (*surety*), his heirs, executors or administrators, shall have been damnified as aforesaid, and that, &c. [*receipts of surety to discharge purchasers*] (1). AND it is hereby also declared that the said (*surety*), his heirs, executors or administrators, shall out of the money produced by such sale in the first place defray the expenses incident to the making and completing of such sale, and in the next place apply a competent part of the said money in the repurchase of the said annuity of £ so granted to the said (*grantee*) as aforesaid, upon the terms agreed upon or stipulated for in the securities for such annuity for the repurchase thereof, or upon such other terms as to the said (*surety*), his heirs, executors or administrators, shall seem reasonable, and shall in the next place out of the money produced by such sale as aforesaid, retain and pay all such sum or sums of money as the said (*surety*), his heirs, executors or administrators, shall have disbursed on account of the said annuity of £ , and all costs incurred by reason of his having so become surety for the said (*grantor*), and pay over the surplus to the said (*grantor*), his executors or administrators. [Add COVENANT by the said (*grantor*) to save harmless and keep indemnified the said (*grantor*), his heirs, executors or administrators, from the said annuity of £ , and from all loss or damage and all costs, charges and expenses, which the said (*surety*), his heirs, executors or administrators, may in any manner sustain or incur by reason or in consequence of his having become surety for the said (*grantor*).] And for further insurance.

INDENTURE.

Surety
(*annuity*).Covenant by
grantor that
sales shall be
valid.Covenant to
indemnify.(1) See *ante*, p. 583.

INDEMNITY.

Tithes
(purchase
money).

No. CCCLXXIII.

**A Deed of Indemnity against Tithes by Investment of part of Purchase Money in the Funds.*

Recitals.

THIS INDENTURE of three parts made the day of , in the year of the reign, &c. and in the year of our Lord 18 , BETWEEN (*the vendor*) of, &c. of the first part, (*the purchaser*) of, &c. of the second part, and (*trustees*) of, &c. (trustees appointed on the behalf of the said (*purchaser*)) of the third part. WHEREAS, &c. [*recite conveyance of the premises to the purchaser and the doubts as to whether the premises are absolutely exonerated from tithes.*] AND WHEREAS it has been agreed that in order to secure and indemnify the said (*purchaser*) against the consequence of any demand in respect of such tithes or any moduses in lieu thereof, the sum of £ part of the said purchase or consideration money shall be invested in the 3 per cent. Consolidated Bank Annuities upon the trusts hereinafter expressed. AND WHEREAS in pursuance of the said agreement the said (*vendor*) hath this day laid out the said sum of £ , in the purchase of £ of such Bank Annuities as aforesaid, and with the approbation of the said (*purchaser*), caused the same to be transferred to the names of the said (*trustees*), in the books of the Governor and Company of the Bank of England. Now THIS INDENTURE WITNESSETH, and it is hereby agreed and declared by and between the parties hereto, that the said £ , 3 per cent. Consolidated Bank Annuities so transferred to the said (*trustees*) as aforesaid, were so transferred to them, and that they and the survivors and survivor of them, and the executors and administrators of the survivor, and their or his transferees and assigns, shall stand possessed of and interested in the same upon the trusts

WITNESS.
Declaration
trust of Bank
Annuities.

and for the ends, intents and purposes, and subject to the provisoes, deductions and agreements hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST (1) that in case at any time or times within the space of _____ years next

hereafter, any tithes in kind, either great or small, predial or incutrial, shall be demanded, sued for and recovered for or in respect of all or any part of the hereditaments so purchased by and conveyed to the said (*purchaser*), or in case any greater or other modus or composition shall be demanded, sued for and recovered, for or in lieu or in respect of any tithes, for or in respect of the same hereditaments or any part thereof, than the annual or yearly sum of £ _____,

they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the last survivor, and their or his transferees and assigns, shall and do raise and pay by and out of the said £ _____ trust-money so invested in their names, and by

sale of a sufficient part thereof, and of the stocks, funds and securities in which the same shall for the time being be invested, such sum or sums of money as shall be equal to the value of the purchase of the fee-simple of the tithes, modus or composition so recovered, to be estimated at the rate of _____ years' purchase thereof, the estimate

of the yearly amount or value of such tithes to be determined by the opinion of two out of three disinterested persons, and one to be chosen by the said (*vendor*), his executors or administrators, another by the said (*purchaser*), his heirs or assigns, and the third by the two first persons so chosen, and shall and do pay such estimated amount of the value of the fee-simple of such tithes, modus or composition to the said (*purchaser*), his heirs or assigns, by way of satisfaction and compensation of and for the tithes, modus or moduses, composition or compositions, so recovered in case such tithes, modus or composition, shall not include, discharge, or come in lieu or stead of the said yearly sum of £ _____, now paid by way of modus

or composition as aforesaid, but if such tithes, modus or composition so recovered shall include, discharge, or come in lieu or stead of the said yearly sum, modus or composition, now paid as aforesaid, then that the trustees or trustee of the said trust-moneys for the time being shall and do deduct out of such estimated value of the said tithes, modus or composition to be recovered, as aforesaid, the value of the purchase of the fee-simple of the said yearly sum now payable as aforesaid, at the rate of _____ years' purchase thereof,

INDEMNITY.

*Tithes
(purchase
money).*

Upon trust to pay to purchaser the value of the tithes recovered.

To be determined by third persons.

(1) These trusts were settled by the late Mr. Fearn.

INDENTURE.

*Tithes
(purchase
money).*

Further trust to
pay and indemnify
against
expenses, &c.

and pay only the excess or surplus of such estimated value of such tithes, modus or composition above such value of the said yearly sum, so to be deducted thereout as aforesaid to the said (*purchaser*), his heirs and assigns. AND also upon further trust that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his transferees and assigns, do and shall out of the said sum of £ so invested as aforesaid, or by sale of a competent part thereof or of the stocks, funds or securities in which the same shall be invested, or by the dividends or interests thereof, from time to time as occasion may require, raise and pay to the said (*purchaser*), his heirs or assigns, all such sums or sum of money, costs, charges and expenses as he, they or any of them at any time or times hereafter during the said term of years, shall or may bear, sustain, incur or become liable to in consequence or by reason or means of his, their or any of their refusing to pay any tithes in kind, or any modus or composition for or in lieu of tithes, or for or in respect of the hereditaments so purchased by the said (*purchaser*) or any part thereof, or in defending, or by reason or means, or otherwise in consequence of any demand, action or suit, or other proceedings, which during the period of time aforesaid shall be made, instituted, commenced or prosecuted against the said (*purchaser*), his heirs or assigns, or against the tenants or occupiers for the time being of the said hereditaments and premises so purchased by him or any part thereof, or for enforcing the payment of any other modus or moduses, composition or compositions, for or in lieu of any tithes predial or vicarial, great or small, of, for or in respect of the said purchased hereditaments and premises, or any part thereof, other than the said yearly sum or modus now payable for the same as aforesaid, or in consequence of any suit or suits to be commenced or instituted by the said (*purchaser*), his heirs or assigns, within the period of time last mentioned for the purpose of establishing or perpetuating the said modus or yearly sum hereinbefore mentioned to be now payable for the said premises as aforesaid, or for confirming or establishing the exemption of the same several purchased hereditaments and premises or any part thereof from the payment of any tithes in kind in respect thereof, or of any modus or compositions in lieu of tithes, other than the said yearly sum or modus hereinbefore mentioned to be now payable as aforesaid, or in consequence of any appeal to be made to the House of Lords or other jurisdiction against any decree or judgment, decrees or judgments of any court or courts in any such suit or suits, action or actions, so to be instituted, commenced or

prosecuted as aforesaid, and of, from and against all loss, costs, charges, damages and expenses, for or by reason or means, or in any wise in consequence of any such demands, action or actions, suit and suits, proceedings, appeal or appeals, or judgments, or decrees therein. AND UPON FURTHER TRUST that in the mean time and until any such sum or sums of money, costs, charges, damages, and expenses, shall be paid, borne, sustained, incurred or become payable as aforesaid, that they the said (*trustees*), and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his transferees and assigns, do and shall permit and suffer and sufficiently authorize and empower the said (*vendor*), his executors, administrators or assigns, to receive and take the interests, dividends and annual proceeds of the said sum of £ or the stocks, funds, or securities, in which they shall be invested for the time being, or so much thereof as shall from time to time remain unsold, or unapplied, or uncalled for, for the purposes aforesaid, or any of them, from time to time as the same shall grow due or become payable, to and for his and their own use and benefit, and from and after the expiration of the said term of years, and full payment of all such sums and sum of money, costs, charges and expenses which before the expiration of the said term shall have become due and payable to or been paid, sustained or incurred by the said (*purchaser*), his heirs or assigns, and to which he or they shall not become entitled under or pursuant to the trusts aforesaid. UPON TRUST that they the said (*trustees*), or the survivors and survivor of them, and the executors or administrators of the survivor, and their or his transferees or assigns, do and shall transfer the then clear remaining surplus (if any) of the said sum of £ or the stocks, funds or securities in which the same shall be then vested, or so much thereof as shall then remain unsold, or unapplied, or uncalled for, for the purposes aforesaid, unto the said (*vendor*), his executors, administrators or assigns. PROVIDED ALWAYS and it is hereby agreed and declared by and between all the parties to these presents that it shall be lawful for the trustees or trustee for the time being of the said trust-monies at any time or times during the existence of the trusts hereinbefore declared with the consent and approbation as well of the said (*vendor*), his executors, administrators or assigns, as of the said (*purchaser*), his heirs or assigns, such consent or approbation to be testified in writing under the hands and seals of the persons whose consent and approbation is so hereby made requisite, to make sale and dispose of the said £ Bank Annuities or any part or

~~EXPENSES.~~

Tithes
 (*purchase*
money).

Further trust
 (subject to the
 indemnities
 aforesaid) for
 the vendor.

Power of
 changing
 securities

INDEMNITY.Tithes
(purchase
money).

parts thereof, or so much thereof as for the time being shall remain unsold for the purposes aforesaid, and to lay out and invest the monies arising by such sale or sales in any parliamentary stocks, public funds or Government securities, and from time to time with such consent and approbation as aforesaid, to alter and change such stocks, securities or funds, and that such new stocks, securities or funds so taken, and the monies placed therein shall be and remain vested in the said trustees or trustee upon the trusts and for the ends, intents and purposes, and under and subject to the provisoes, declarations and agreements hereinbefore expressed or declared or such of them as shall be then capable of taking effect. PROVIDED also, &c. [*Add power of appointing new trustees and clauses of indemnity.*] (1) IN WITNESS, &c.

Power of appointing new trustees, &c.

New trustees, &c.

(1) See *ante*, p. 556.

INSOLVENCY.

UNDER this head it was intended to introduce a consolidated abstract of the recent Acts of Parliament relative to insolvent debtors, as well on account of their extensive operation as of the Precedents on the same subject inserted in the prior part of the Work ; but as two of the latest acts, viz. 3 Geo. 4. c. 123. and 5 *ib.* c. 61, will expire at the end of the present session of Parliament, when they may or may not be revived, and if continued may receive amendments or alterations, I have thought it better to postpone them at present, in the hope that an opportunity may be afforded of recurring to them under a subsequent head before the whole work is printed.

LICENCE.

To assign
(leaseholds).

No. CCCLXXIV.

A Licence from a Lessor to his Lessee to Assign or Underlet (1)

MEMORANDUM, that (*the lessor*) of, &c. doth license and permit (*the lessee*) of, &c. his executors and administrators, to demise, assign or otherwise part with, or dispose of all or any part of the messuages, or tenements and premises, to him demised in or by a certain indenture of lease, bearing date the day of , unto any person (2) or persons, at his or their free will and pleasure,

(1) Licence after breach not good unless by deed, *Sellers v. Beckford*, 1 Moore 460; 8 Taunt. 31. S. C. Parol licence not sufficient if written one required, unless given as a snare, in which case equity will relieve, *Richardson v. Evans*, 3 Madd. 218.

(2) If the licence be intended to be restricted to a particular person, instead of the words in the text, say,

“Unto (*the intended assignee*) of, &c. from the day of , for and during the term of years; but nevertheless, with and upon this express condition, or proviso, that the said (*intended assignee*) shall in the lease or assignment so intended to be made to him as aforesaid, be restrained and precluded from assigning, underletting or otherwise parting with the same premises, or any part thereof, or any term, estate or interest therein, without the licence and consent in writing of the said (*lessor*), his heirs or assigns, first had and obtained for that purpose, in the same manner to all intents and purposes as the said (*lessee*) is prohibited from parting with the possession of the same premises by the above mentioned lease so granted to him as aforesaid.”

Licence restricted to a particular person.

A condition being an entire thing, if any part of it is dispensed with, the whole is gone; and therefore a licence to assign, &c. once given by the landlord will abrogate the proviso altogether, and give the lessee, or his assignee, liberty to assign afterwards at pleasure, even though such licence be restricted to a particular person by name; and see *Brummel v. Macpherson*, 14 Ves. 173. If therefore the original lease do not contain a proviso, restraining this construction of the licence,

Licence once given will abrogate proviso not to assign.

LICENCE.To assign
(leaseholds).

for all or any part of the estate, term or interest of him the said (lessee) therein, under or by virtue of the said indenture, any covenant, clause, restriction or agreement therein contained to the contrary notwithstanding.* IN WITNESS whereof the said (lessor) hath hereto set his hand this day of

it will be necessary that a proviso, to the following purport, should be subjoined to the above variation :

Proviso that
licence shall not
extend to further
assignment.

“ PROVIDED ALWAYS, nevertheless, and it is hereby declared and agreed, by and between the said (lessor) and (lessee), that the licence so hereby given by him the said (lessor) to the said (lessee) as aforesaid, and he doth hereby accept the same upon this express restriction and condition, that such licence shall not extend, nor be deemed nor construed to extend, to permit the said (lessee) to make any further assignment, underlease or disposition of the said premises, or any part thereof, or of any estate or interest therein, at the expiration or other determination of the said term of years so hereby permitted to be granted unto the said (*intended assignee*), as before is mentioned, without the like licence and consent of the said (lessor), his heirs or assigns, first had and obtained for that purpose, any rule of law to the contrary in anywise notwithstanding.”

If licence in-
clude an agree-
ment, it must be
stamped.

As a licence, with the last variation subjoined, will be in effect an agreement between the parties for the waiver of the original restriction, to a certain extent only, it will require to be impressed with an agreement stamp.

* Sometimes the following proviso is added, but unnecessarily.

“ PROVIDED ALWAYS, that nothing in this licence nor any thing herein contained shall extend to exonerate or discharge the said (lessee), his executors or administrators, from payment of the rent or performance of the covenant or agreement contained in the said indenture of lease on his and their part to be performed.

LICENCE.

*To demise
(copyholds).*

No. CCCLXXV.

A Licence by the Lord to a Copyholder to Demise Copyhold Premises (1).

Manor of } BE IT REMEMBERED that on the day of
 } in the year of our Lord 18 , the lord of the said manor, out of court by , his steward, duly authorized in that behalf (2), granted leave unto (*the copyholder*) of, &c. one of the customary tenants of the same manor, to demise and let ALL, &c. (3) unto any person (4) or persons whomsoever being willing to

(1) A copyholder being, in contemplation of law, only a tenant at will, has no power to grant a lease for any longer period than one year, unless authorized to do so by a special custom of the manor, or by a licence from the lord. This licence being merely an authority, will necessarily determine with the interest of the person granting it. Care, therefore, should be taken, that the lord from whom the licence is obtained have an interest in the manor capable of supporting the lease intended to be granted, for if he be merely a tenant for life, or for years and die, or his interest expire before the expiration of the lease, the licence will become void, and the term of years granted in consequence of such licence, will determine with it; *Pettie v. Debbans*, 1 Roll. Ab. 511; *K. Co. Copyh. s. 24*; *Gilb. Ten. 298*; *Petty v. Evans*, 2 Brownl. 40.

Copyholder cannot lease without licence for more than one year. Licence will determine with interest of person granting it.

(2) The steward cannot, according to Sir Ed. Coke, see *Co. Coph. s. 42*, and also *Gilb. Ten. 333*, grant a licence to demise, even though in full court, and in the name of the lord, unless authorized to do so by the custom of the manor, or by words in his patent, or by the special authority of the lord, but as any act of the lord, either by signing the court book, or by receiving the fine for the licence, will amount to a confirmation of it, see 2 *Watk. Cop. p. 118, n. (o)*; this objection is seldom considered of much importance.

Steward cannot grant licence unless specially authorized.

(3) Here describe particularly the premises which the copyholder wishes to demise, as no more will be permitted to be let than are included in the licence.

Parcels.

(4) Sometimes the licence is confined to a lease to be granted to a particular person, in which case, say,

Lease to a particular person.

“Unto (*the intended lessee*) of, &c. for the term of years, to commence, &c.” as above.

LICENCE.To demise
(copyholds).

take the same, for the term of years (1) to commence (2) from the day of next ensuing (3), or for any shorter term (4), saving always unto the said lord of the said manor, for the time being, his heirs, sequels in right and assigns, all and all manner of fines, rents, services and customs before due, and of right accustomed to be paid; with full power for him and them from time to time, and at all times during the said term, to enter into the said premises or into any part thereof to seize, distrain and take any distress or other lawful remedy for recovering thereof as freely as if this licence had not been given. AND for this licence the said (copyholder) hath given unto the said lord the sum of , being pence for each year of the said term.

Term of years created by licence, is a common law interest.

Licence must be strictly pursued.

Lease may be for years determinable upon lives, but not for life.

Lease may be for less time than licence specifies.

(1) The term of years thus created is a common law and not a copyhold interest, and may therefore be assigned by the lessee without any further licence or authority from the lord. If this, therefore, be contrary to the intent of the lord, a clause of restriction should be added, similar to that given, see *ante*, p. 601. n. (2).

(2) The licence being in the nature of an authority, must be strictly pursued; care therefore must be taken that the lease correspond with the terms of the licence, as if the licence be to lease for twenty-one years from Michaelmas, and the copyholder lease for twenty-one years, to commence at the Christmas following, the lease will be void, *Jackson v. Neale*, Cro. Eliz. 395. So if he lease for a term of years absolutely, under a licence to lease for such term if he shall so long live, unless he be tenant for life, in which case the condition will be implied, *Haddon v. Arrowsmith*, Cro. Eliz. 462; *Worledge v. Benbury*, Cro. Jac. 436.

(3) The lord may authorize the copyholder to demise either for a term of years absolutely, or determinable on lives, but not to demise for life, even though there be a custom alleged to support it, as a demise for life would pass a freehold interest, *Godb. 171*, ca. 236.

(4) These words are not essential, as the copyholder may demise for a less, though not for a greater term than his licence specifies, *Goodwin v. Longhurst*, Cro. Eliz. 535.

Stamp.

* * * This licence will require a £1 stamp, unless the clear yearly value of the estate do not exceed 20s., in which case a 5s. stamp only will be necessary, see *post*. Vol. III. "STAMP."

LICENCE.

*Creditor to
Debtor.*

No. CCCLXXVI.

A Letter of Licence from Creditors to a Debtor.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE whose names and seals are hereunto set and affixed, respectively creditors of (*the debtor*) of, &c. send greeting. WHEREAS the said (*debtor*) is indebted to us, the said persons whose names and seals are so hereunto set and affixed as aforesaid, in divers sums of money, which he is at present unable to pay without making sale of his estate and effects, to the great prejudice of his trade. AND WHEREAS being satisfied of the integrity of the said (*debtor*), and the solvency of his affairs, we have agreed to allow him the space of to enable him to pay the said debts. NOW KNOW YE, that we the said several creditors of the said (*debtor*) severally and respectively, and for our several and respective heirs, executors and administrators, partners and assigns, but not for each other, or for the heirs, executors, administrators, partners or assigns of each other, HAVE at the request of the said (*debtor*), given and granted, and by these presents Do give and grant unto him the said (*debtor*) free and full liberty, licence and authority to attend to, follow, carry on, conduct and manage all and every his said trade or business and affairs and concerns, and to transact and attend to any affairs, matters or things whatsoever, at any place or places within the United Kingdom of Great Britain and Ireland, at his free will and pleasure, and without any let, suit, action, arrest, attachment or other impediment or molestation to be offered or done unto him, his goods, chattels, monies or other effects whatsoever, by us or any of us, or our respective heirs, executors, administrators, partners or assigns, or by our or their means or procurement, for and during the space of calendar months next after the day of the date hereof, if (1) he the

Recital of
debtor's inability
to pay his debts.The creditors
grant licence to
debtor.

(1) If the licence be accompanied by a deed of assignment, or composition, affording a security to the creditors for their debts, these words should be omitted.

Licence accom-
panied by deed
of assignments.

LICENCE.

*Creditor to
Debtor.*

Creditors will
not molest
debtor.

If any creditor
sue his debt to
be void.

said (*debtor*) shall so long live. AND FURTHER (1), that we the said creditors, for ourselves respectively, and our respective heirs, executors, administrators, partners and assigns, but not jointly or for each other, or for the heirs, executors, administrators or assigns of each other, do, and each of us doth covenant and grant with and to the said (*debtor*), his executors and administrators, that we or any or either of us, our heirs, executors, administrators, partners or assigns, each of us covenanting severally as aforesaid, shall not, nor will, during the time or period aforesaid, sue, arrest, attach or prosecute the said (*debtor*), for or on account of our, or any or either of our said respective debts or demands or any part thereof. AND MORE-OVER, that if any such action, arrest, attachment or prosecution aforesaid, be prosecuted or commenced against the said (*debtor*), either in his person, goods or chattels, within the said term or period, by us or any of us, or by any other person or persons by or through our or either of our procurement or consent, contrary to the true intent and meaning of these presents, then the said (*debtor*), by virtue hereof, shall be thenceforth and for ever acquitted, exonerated and discharged both at law and in equity, of and from all and every the debts, claims and demands whatsoever, owing to such of us the said creditors, our respective heirs, executors, administrators or assigns, by whom or by whose order, means or procurement, he the said (*debtor*), his goods, chattels, monies, estates or effects, shall be so arrested, imprisoned, attached or damnified, and this present letter of licence in any or either of the said cases shall be and operate as a release of, and may be pleaded in bar to the same debts, claims and demands, and to any such action, attachment, arrest, prosecution or process as aforesaid. IN WITNESS, &c.

Licence will
operate as a re-
lease, if creditor
sue.

Stamp.

(1) This agreement, that if any of the creditors sue within the time limited, the debt of the creditor so suing shall be forfeited, will operate as a release of the debt of such creditor; for the words "shall be forfeited," make an absolute defeazance upon a suit commenced.

Deed stamp if under seal, but agreement stamp if under hand only.

LICENCE.

By Patentee
(to sell).

No. CCCLXXVII.

A Licence by Patentee, to make and vend Patent Goods, &c.

TO ALL TO WHOM THESE PRESENTS SHALL COME, (*the patentee*) of, &c. sendeth greeting. WHEREAS the said (*patentee*) hath obtained letters patent from his present Most Gracious Majesty, bearing date the day of , for the sole and exclusive benefit and advantage of making and vending certain , in the said letters patent set forth, for the term of years, from the date thereof. AND WHEREAS, for the purpose of extending the sale of the said invention the said (*patentee*) hath agreed to permit (*the licensee*) of, &c. to make, sell, and dispose of the same upon the terms and conditions hereinafter mentioned. NOW KNOW YE, that he the said (*patentee*) HATH given and granted, and by these presents, under his hand and seal (1) DOTI give and grant unto the said (*licensee*), full and free licence, liberty and permission to make, sell, and dispose of in the said letters patent mentioned or referred to, under and according to the specification thereof, enrolled in his Majesty's High Court of Chancery. PROVIDED ALWAYS, nevertheless, and these presents are upon this express condition, that if the said (*licensee*) do, or shall assign over, or in anywise give or transfer the licence hereby given, or the benefit thereof, or of any part thereof, to any person or persons whomsoever, without the consent in writing of the said (*patentee*), his executors or administrators, these presents, and every thing herein contained shall cease and be utterly void to all intents and purposes whatsoever. IN WITNESS whereof the said (*patentee*) hath hereunto set his hand and seal, this day of .

WITNESS,
Patentee grants,
&c.No assignment
without licence.

(1) It is usually required by the patent, that the licence of the patentee shall be under his hand and seal; it follows that it will require a deed stamp. Hand and seal.
Stamp.

LICENCE.By Patentee
(use Machine).

No. CCCLXXVIII.

**A Licence from a Patentee or his Assigns, by Indenture, to use
a Patent Machine and make and sell Patent Goods, &c.*

WITNESS.
Patentee grants
licence, reserv-
ing, &c.

THIS INDENTURE made the day of in the
year, &c. and in the year of our Lord 18 , BETWEEN (*pa-
tentee or his assignee*) of, &c. of the one part, and (*licencee*) of, &c.
of the other part. WHEREAS, &c. [*recite shortly the patent and as-
signment, if any.*] NOW THIS INDENTURE WITNESSETH, and the
said (*patentee*) for himself, his heirs, executors, and administrators,
doth hereby covenant and agree with and to the said (*licencee*), his
executors and administrators, that he the said (*licencee*), his executors
and administrators, shall have licence and authority during the con-
tinuance of the said letters patent of the day of , [or
during the term of years (*as the case may be*)], to use and
work and to vend and sell the which shall be made or
manufactured from the machine specified in the said letters patent,
for his and their benefit and advantage, saving and reserving unto
the said (*patentee*), his executors and administrators, and all persons
who shall be duly licensed by him, the power to use and work the
same or like machine, and to sell the made therefrom, and
all other powers, authorities, liberties, and privileges granted and re-
served by the said letters patent to the said (*patentee*), his execu-
tors, administrators, and assigns, and reserving and retaining the sole
right of suing, at law or equity, all infringements of the said letters
patent, and of receiving and recovering, for his own and sole use, all
damages and costs to be awarded and recovered in any and every
such suit or action. AND THIS INDENTURE FURTHER WITNESSETH,
that the said (*licencee*) for himself, his heirs, executors, and ad-
ministrators, doth hereby covenant and agree with and to the said
(*patentee*), his executors, administrators, and assigns, in the manner
following, (that is to say) that he the said (*licencee*), his executors
or administrators, shall and will pay to the said (*patentee*), his ex-

FURTHER
WITNESS.
Licencee cove-
nants to pay.

ecutors, administrators, and assigns, during the continuance of these presents, the yearly rent or sum of £ , at such place or places as he or they shall appoint, by four equal quarterly payments, on the, &c. in every year, during the continuance of the said licence. AND that in case any of the said quarterly payments shall be in arrear for the space of after the same shall be payable, it shall be lawful for the said (*patentee*), his executors or administrators, to enter the place or places where such machine shall be kept, and distrain and sell the same, and all the or materials belonging to the said (*licencee*), his executors or administrators, in or about the place or places where such machine shall be kept, in the same manner as landlords may distrain for rent in arrear; and that he the said (*licencee*) shall not remove the same machine without giving in every case fourteen days' notice in writing to the said (*patentee*), his executors, administrators, or assigns, specifying the place to which the same shall be about to be removed; and that the said (*licencee*), his executors or administrators, shall not make, use, work, or possess for use, any other machine for making , than such as are licensed by the said (*patentee*), his executors, administrators, or assigns, and that it shall be lawful for him or his agents (not being mechanics) at any time to enter any place where such machine shall be or ought to be kept, for the purpose of ascertaining whether the same be there or not; and that the said (*licencee*), his executors and administrators, shall use his and their utmost endeavours to detect all infringements on the said patent, and assist the said (*patentee*) in prosecuting the same: That in case the said letters patent, or such therein contained as shall be necessary to support this present licence, shall be set aside by any legal proceedings, or in case the said (*licencee*), his executors or administrators, shall give three calendar months' notice, ending on one of the quarterly days aforesaid, to vacate these presents, then this indenture shall cease, except as to said (*patentee*) recovering any arrears of quarterly payments, or any damages for breach of covenants herein contained: That in case any of the quarterly payments shall be in arrear fourteen days, and sufficient distress cannot be had for recovery thereof, or if said (*licencee*), his executors or administrators, shall fail in performance of any of the covenants herein contained, it shall be lawful for the said (*patentee*), his executors, administrators, or assigns, to revoke and annul these presents, by giving one week's notice in writing to said (*licencee*), his executors or administrators, to that effect, at his or their last or usual place of abode, but subject and without prejudice

 LICENCE.

By Patentee
(use Machine).

Power of distress.

Revocation.

LICENCE.

By Patentee
(*use Machine*).

to the recovery of such arrears, or of any damages for breach of covenants on his or their part. PROVIDED, &c. [*reference of disputes to arbitration* (1).] IN WITNESS, &c.

(1) See *ante*, Vol. I. p. 27.

LICENCE.

Fell Timber
(copyholds).

No. CCCLXXIX.

A Licence from the Lord to a Copyhold Tenant to Fell Timber (1).

Manor of } BE IT REMEMBERED, that on the day of ,
 } in the year of our Lord 18 , licence (2) was granted
 unto (*the copyholder*), one of the customary tenants of the same
 manor to fell within calendar months (3) from the
 day of , oaks, elms,
 ash trees and beech trees, now growing upon certain tenements,

(1) A copyholder, unlike other tenants at will, is obliged to keep the premises in repair, and is, therefore, for that purpose allowed to cut down the necessary timber growing on his copyhold, without alleging a special custom, *Ashmead v. Ranger*, 1 Lord Raym. 551; but if he fell for any other purpose than housebote, ploughbote, &c. without licence from the lord, unless authorised by a special custom, 1 Roll. Ab. 560; *Rockey v. Huggins*, Cro. Car. 121, it will be a forfeiture of the estate, the lord being *prima facie* entitled to all the timber growing upon the lands of his tenants, save as to botes, 1 Lord Raym. 551. A licence of this kind or any other beneficial licence to be exercised upon land may, it seems, be granted without deed or other writing; see *Taylor v. Waters*, 7 Taunt. 374; but it would evidently be unadvisable to trust to the uncertainty necessarily attendant upon a licence by word of mouth only.

Timber for repairs may be felled on copyholds without licence.

(2) Although the licence to fell the timber be granted by a lord, who is tenant for life only of the manor, and the copyholder proceed to fell the timber under such licence, yet it will be no forfeiture of the copyhold interest; but it seems the lord in remainder, who has a property in the trees, may have his remedy against the particular or licensing lord, and may, perhaps, have an injunction to stay the felling, if the timber be not actually cut; see *Wentworth v. Turner*, 3 Ves. 3, and 2 Watk. Cop. 115.

Timber felled under licence from tenant for life, no forfeiture of copyholds.

(3) If the lord from whom the licence proceed have only a partial interest in the land, as for life, &c. and his interest cease before the whole of the timber be felled, the copyholder cannot proceed to cut down the remainder without a fresh licence from the succeeding lord, *Gilb. Ten.* 298; 1 Keb. 25.

Timber cannot be felled after expiration of licence.

LICENCE.Fell Timber
(copyholds).

called _____, within the manor aforesaid, to be chosen (1) and set out by the said (*copyholder*), and the same to convert to his own use, or sell and dispose of at his free will and pleasure, without any account to be rendered for the same. AND for this licence (2) the said (*copyholder*) hath given unto the said lord £

Trees particularly specified.

(1) If the trees to be felled are to be particularly specified, say,
“To be forthwith set out, and marked by the woodward, or reeve of the said manor, as in such cases used and customed.”

Fine in proportion to number of trees to be felled.

(2) If the fine be in proportion to the quantity of timber felled, say,
“And for this licence the said (*copyholder*) is to pay unto the lord for a fine, within the space of three calendar months after the felling of the said trees, or any of them, the sum of three shillings and fourpence for every ton which the said trees shall contain, according as the same shall be admeasured by the woodward, or reeve of the said manor, as in such cases used and accustomed.

LICENCE.

To Trade.

No. CCCLXXX.

A Licence to exercise a Trade in waiver of a restriction contained in a Lease or other Instrument.

MEMORANDUM, that I (*the lessor*) of, &c. do hereby give full licence and liberty unto (*the lessee*), of, &c. to use, exercise, and carry on upon the messuage, or tenement and premises, demised to him by an indenture of lease, bearing date the day of , the trade or business of (1), and for that purpose, if he shall think proper, to convert the same into a shop or warehouse, for the sale of the several goods, wares and other things incident and belonging to the said trade or business of ; UPON THIS EXPRESS CONDITION, nevertheless, that the said (*lessee*), his executors or administrators, do and shall in such case, before the expiration of the term of years granted to him by the said indenture of lease, re-convert the said premises into a private house, or dwelling, and leave the same in such state of repair as is required by the terms of the said lease, and in such and the same manner in all respects as if this licence had not been given, or the said premises had not been converted into a place of sale for goods and merchandise. AS WITNESS my hand this day of

(1) It has been observed in a preceding note, that a condition, being an entire thing, if any part of it be once dispensed with, the whole condition is gone, and cannot be revived; and hence, that a licence to assign, even though confined to a particular person by name, will abrogate the proviso altogether, and the lessee may afterwards assign at pleasure; see *ante*, p. 601. n. (2). But a permission to use one of the trades mentioned in the condition is not a waiver of the entire stipulation, so as to permit the tenant to exercise any of the rest, *Macher v. Foundling Hospital*, 1 Ves. and Bea. 189. This apparent contradiction is easily reconciled, by attending to the distinction that the proviso restraining the several trades mentioned in the lease, is not one entire condition, like that against assigning; but is in fact a string of separate conditions, applicable to each trade in particular, without relating to those conjoined with it, any one of which may therefore be dispensed with, without the dispensation affecting the others.

Licence to use one trade not a waiver of the condition, so as to permit any other trade.

LIMITED ADMINISTRATION.

Outstanding Term.

No. CCCLXXXI.

Letter of Administration limited to an Outstanding Term (1).

Recital of assignment of term to deceased trustee.

GEORGE, by Divine permission, Bishop of _____, to (*the intended administrator*) of, &c. greeting. WHEREAS by an indenture of assignment, bearing date the _____ day of _____, in the year of our Lord 18 _____, and made or expressed to be made between (*the then vendor*) of, &c. of the first part, (*the termor*) of, &c. of the second part, (*the then purchaser*) of, &c. of the third part, and (*the deceased trustee*) of, &c. a trustee named and appointed by and on the part and behalf of the said (*purchaser*), for the purposes thereafter mentioned, of the fourth part, the said (*termor*) assigned and transferred ALL, &c. (2) To HOLD the same

Limited administration will be granted of outstanding term.

(1) The necessity of a purchaser having an assignment made to him of an outstanding term for protection against mesne incumbrances, and which term (if more than one), should be selected for this purpose, has been shewn in a preceding note; see *ante*, Vol. I. p. 540, n. (1). But it not unfrequently happens that the representative of the person in whom the term appears to have been last vested, cannot be found: in this case, the ordinary (in whom all the chattel interests of the intestate become vested by virtue of the statute, 31 Ed. 3. c. 11; *Kensloe's case*, 9 Co. 38.) will, upon application made to him on the part of the owner of the inheritance (to whom all outstanding satisfied terms rightfully belong), grant letters of administration of the term to the owner of the fee, or his nominée, in order that it may be merged, or become expressly attendant upon the inheritance, as may be required, which administration being limited to that part of the intestate's estate only which regards his interest in the term; is styled a limited administration; but as a term after great lapse of time will be presumed to have been merged unless the contrary appear, *Hillary v. Waller*, 12 Ves. 239, it is for the latter purpose only that such letters need be obtained, and of which the above is the usual form.

After length of time, outstanding terms are presumed to have been merged.

Parcels.

(2) Insert here a description of the premises conveyed to the trustee, taken from the deed of assignment.

unto the said (*deceased trustee*), his executors, administrators and assigns, from thenceforth, for and during all the residue and remainder of a certain term of _____ years, created by an indenture bearing date the _____ day of _____, in the year of our Lord 18____, then to come and unexpired, IN TRUST, nevertheless, for the said (*purchaser*), his heirs and assigns, and to be assigned and disposed of from time to time as he or they should direct or appoint; and in the mean time to attend and wait upon the reversion and inheritance of the lands, tenements and premises therein comprised, in order to protect the same from all subsequent and intermediate incumbrances. AND WHEREAS, by divers mesne conveyances, devises and other good and sufficient assurances in the law, (*the owner of the inheritance*) of, &c. is now become entitled to the freehold and inheritance of the several messuages, tenements and premises, assigned to the said (*deceased trustee*) for the residue of the aforesaid term of _____, in and by the hereinbefore in part recited indenture of assignment of the _____ day of _____, and hath also the sole equitable right, title and interest, in and to the now residue of the said term. AND WHEREAS it hath been alleged on the part of the said (*owner*), that the said (*deceased trustee*) departed this life intestate, and without having made any assignment of the said premises, or the then residue of the said term of _____ years, and that no letters of administration of the goods, chattels and credits of the said (*deceased trustee*), deceased, have been granted, and therefore the said (*owner*) is unable to make a complete legal title to the said premises, for want of a personal representative of the said (*deceased trustee*), deceased. AND WHEREAS the said (*owner*) is desirous that letters of administration of the goods, chattels and credit of the said (*deceased trustee*), deceased, may be committed and granted to the said (*intended administrator*), limited only for the purpose of assigning the residue and remainder of the said term of _____ years so as aforesaid vested in the said (*deceased trustee*), deceased, to some person or persons, in trust to attend upon the reversion and inheritance of the said premises, for the purpose of protecting the same from mesne incumbrances. WE, therefore, the bishop aforesaid, do by these presents grant free power to you the said (*intended administrator*) a person named by and on the part and behalf of the said (*owner*), and in whose fidelity we greatly confide, to administer and faithfully dispose of the goods, chattels and credits of the said (*deceased trustee*), intestate deceased, limited so far as concerns all the right, title and interest of him the said (*deceased*

LIMITED ADMINISTRATION.

 Outstanding Term.

Of inheritance having become vested in the present owner.

Of decease of trustee intestate.

Of owner's desire that limited administration may be granted.

Grant of administration limited to the outstanding term.

LIMITED ADMINISTRATION.

**Outstanding
Term.**

trustee), deceased, in and to all those messuages or tenements and premises hereinbefore and in the said in part recited indenture of assignment of the _____ day of _____ more particularly described ; and the residue and remainder of the said term of _____ years, therein now to come and unexpired ; and all benefit and advantage to be had, received and taken therefrom, but no further, or otherwise, or in any other manner whatsoever ; you being first sworn on the Holy Evangelists well and faithfully to administer the same, and to make a true and perfect inventory of the goods, chattels and credits of the said (*deceased trustee*), deceased, limited as aforesaid, and to exhibit the same into the registry of our episcopal court of _____, together with a true and just account of and concerning your administration therein, when you shall be thereunto lawfully required ; and we do by virtue of these presents, ordain, depute and constitute you the said (*intended administrator*), the administrator of the goods, chattels and credits of the said (*deceased trustee*), deceased, limited so far as concerns all the right, title and interest of him the said (*deceased trustee*), deceased, in and to all and singular the messuages or tenements and premises, with the appurtenances hereinbefore particularly mentioned and described, and the residue and remainder of the said term of _____ years therein granted as aforesaid, and now to come and unexpired, and all benefit and advantage to be had, received and taken therefrom ; but no further or otherwise, or in any other manner whatsoever. Given under the seal of our Vicar General, and Official Principal, which we use in this behalf, the day of _____, in the year of our Lord 18____, and in the year of our translation.

No. CCCLXXXII.

A Memorial, to be Registered (1), of the Grant of an Annuity.

A Memorial to be registered pursuant to an Act of Parliament made in the seventh year of her late Majesty Queen Anne, entituled, "*An Act for the Public Registering of Deeds, Wills, or other Incumbrances which shall be made or may affect any Honors, Manors, Lands, Tenements or Hereditaments within the County of Middlesex,*"

OF an indenture of grant and demise, [or assignment, *as the case may be*] bearing date the day of , in the year of our Lord 18 , and made between (*the grantor*) of, &c. of the one part, (*the grantee*) of, &c. of the second part, and (*the trustee*) of, &c. of the third part, purporting to be the grant of an annuity unto the said (*grantee*) during the life of the said (*grantor*), issuing out of and chargeable upon ALL, &c. (2) which said indenture is witnessed by of , and of , and is hereby required to be registered by the said (*grantee*). As WITNESS his hand and seal this day of .

Signed and sealed }
in the presence of } (*Grantee*) L. S.

A. B. } Two witnesses, one of them being an attesting wit-
C. D. } ness to the deed memorialized.

(1) On the general registry of deeds see *post.* No. CCCXCV. p. 637, notes.

For the form of a memorial to be *enrolled*, of an annuity, see *post.* p. 618.

(2) Here set out the parcels as described in the deed of grant.

Parcels.

MEMORIAL.

Annuity to be enrolled.

No. CCCLXXXIII.

A Memorial of an Annuity to be Enrolled (1), pursuant to Act of 53 Geo. 3 Cap. 141.

Date of Instrument.	Nature of Instrument.	Names of Parties.	Name of Witnesses.	Name or Names of Persons or Persons by whom Annuity or Rent-Charge to be beneficially received.	Person or Persons for whose Life or Lives the Annuity or Rent-Charge is granted.	Consideration and how paid.	Amount of Annuity or Rent-Charge.
10 Aug. 1813.	Indentures of Lease and Release.	A. B. of the one Part. C. D. of the other Part.	E. F. of (2) G. H. of	C. D.	A. B.	£100 paid in Money. £500 paid in Notes of the Governor and Company of the Bank of England, or other Notes or Bills of Exchange, as the Case may be.	£100 a Year.
Same date.	Bond in Penalty of £1,200.	A. B. to C. D.	E. F. G. H.	For securing the same Annuity or Rent-Charge.			
Same date.	Warrant of attorney to confess Judgment on the same Bond.	A. B. to I. K. and L. M. Attornies of Court of King's Bench.	E. F. G. H.				

(1) By the act of 53 Geo. 3. cap. 141. s. 2. it is enacted that a memorial of every deed, bond, instrument, or other assurance by which an annuity or rent-charge shall be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall be enrolled in the High Court of Chancery within thirty days next after its execution, in the above form, with such alterations as the nature and circumstances of any particular case may reasonably require; unless, sec. 10, such an annuity or rent-charge be given by will or marriage settlement, or for the advancement of a child, or be secured upon freehold, or copyhold, or customary lands, in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, (of which the grantee had notice at the time of the grant), whereof the grantor is seized in fee simple or fee tail in possession, or the fee simple whereof in possession the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public Funds, the dividends whereof are of equal or greater value than the annuity; or unless it be granted without regard to the pecuniary consideration or money's worth; or be granted by any body corporate, or under any authority or trust created by act of parliament.

This memorial must contain the date of every such deed, bond, instrument, or other assurance, the nature of the instrument, the names of all the parties and of all the witnesses thereto, the name of the person or persons for whose life or lives the annuity or rent-charge shall be granted, and of the person or persons by whom the same is to be beneficially received; the pecuniary consideration or considerations for granting the same, the annual sum or sums to be paid; unless, s. 8. the annuity be granted by, or to, or for the benefit of any company exceeding ten persons, which shall be formed for the purpose of granting or purchasing annuities, in which case it shall be sufficient if the memorial describe such company, by its usual firm or name of trade.

* Under the above act it was doubted, whether the omission to enroll any one of the assurances for securing an annuity vitiated the rest, which gave rise to stat. 3 Geo. 4. c. 92. by which it is declared that such of the assurances as are enrolled shall be good notwithstanding the non-enrollment of others.

In case of a *bond fide* sale of landed property whether freehold or leasehold, when the consideration either wholly or in part is an annuity to be paid to the vendor, the consideration for granting the annuity being an estate in land, is not a pecuniary consideration or money's worth within the statute, and the annuity need not be enrolled; *James v. James*, 2 Brod. and Bing. 702. Thus when the consideration for the annuity was a life interest in certain veins of coal the security need not be memorialized, *ibid*.

A surety who charges his estate with the payment of an annuity is a grantor within the meaning of the act, and no memorial is requisite if he be seized of the estate in fee simple and it be of greater annual value than the annuity, *Darwin v. Lincoln*, 5 Barn. and Ald. 444.

(2) The memorial of an annuity must contain the Christian name of the subscribing witness to the securities; the initial of the Christian name is not sufficient; *Check v. Jeffries*, 2 B. and Cress. 1. And under the 53 Geo. 3. it was held that the memorial must contain the description and place of residence of the witnesses to the annuity-deed, by reason of the word "of" in the form of memorial contained in the act; but by 3 Geo. 4. c. 92. sec. 2. that no further description of witnesses to any deed or other instrument, by which an annuity or rent-charge shall be granted, is required by the 55 Geo. 3. besides the names of such witnesses; *Darwin v. Lincoln and Loch*, 5 Barn. and Ald. 444. *Smith v. Pritchard*, 5 ib. 717. contra, *St. John v. Champary*, 1 Bingh. 77.

The memorial of an annuity granted, since the 53 Geo. 3. need not state that the annuity is redeemable, nor the name of the party in whose favour the warrant of attorney is given; *Yerns v. Smith*, 3 B. and Ald. 206. Nor if it be granted during the lives of several persons, will it be necessary to state their description by residence or otherwise, but only their names, neither will it be necessary to state that the annuity was granted during the joint lives or the life of the survivor, or for a term of years determinable on their lives; *Barber v. Garrison*, 4 Barn. and Ald. 281.

The penal sum for which the warrant of attorney authorizes judgment to be entered, need not be stated; *Barber v. Garrison*, 4 B. and Ald. 281.

If a person wholly unconnected with the grantor and for a separate consideration (as in the case of an agent receiving a commission) guarantee the payment of an annuity, it is an assurance not necessary to be enrolled; *Sundilands v. Maul*, 2 Barn. and Ald. 678.

Nor is it necessary since the 53 Geo. 3. to state in the memorial a covenant by the grantor not to go upon or beyond the seas without notice to the grantee, in order to enable him to pay additional premium, which premium the grantor covenanted to pay to the grantee; *Wood v. Perrett*, 5 Moore, 68.

MEMORIAL.

Annuity to be enrolled.

Memorial of annuity must be enrolled within thirty days.

What memorial must contain.

MEMORIAL.Appointment.

No. CCCLXXXIV.

A Memorial of an Appointment under a power contained in a Marriage Settlement or Will (1).

A Memorial to be registered, &c.

OF a deed poll under the hand and seal of (*the appointor*) of, &c. bearing date the day of , in the year of our Lord 18 , purporting to be an appointment by the said (*appointor*) unto (*the appointee*) of, &c. of ALL, &c. (2) which said appointment is made in pursuance of a power contained in an indenture of release bearing date the day of , and made between, &c. a memorial whereof was registered on the day of . B. No. , and which said deed-poll is witnessed by of , and of , and is hereby required to be registered (3) by the said (*appointee*), as witness his hand and seal this day of .

Signed and sealed in } (*Appointee*) L. S.
the presence of (4) }

A. B.

C. D.

Appointment
must be regis-
tered.

Parcels.

(1) It was formerly supposed that a deed of appointment under a power need not have been registered; because upon the execution of a power, the interest limited by it arises under the deed creating the power, but it is now settled that all deeds of appointment must be registered. See *Scrafton v. Quinsey*, 2 Ves. 413.

(2) Here set out the parcels contained in the deed of appointment.

(3) See *post*. p. 638, n. (4).

(4) See *post*. p. 639, n. (1).

MEMORIAL.

Assignment
(lease).

No. CCCLXXXV.

*A Memorial of an absolute Assignment of Leaseholds (1).
Variations where it is by way of Mortgage or otherwise (2).*

A Memorial to be registered, &c.

Of an indenture of assignment bearing date the _____ day
of _____, in the year of our Lord 18____, and made
between (*the assignor*) of, &c. of the one part, and (*the assignee*)
of &c. of the other part; purporting (3) to be an absolute assign-
ment to the said (*assignee*), his executors, administrators, and as-
signs, of ALL, &c. (4), which said indenture of assignment is wit-

(1) If the lease have not been already registered, it will be necessary that it should be done previously to the registry of the assignment, as it has been determined that the registry of the assignment, even although it recite the lease, is not a registry of the lease; see *Honeycombe, ex dem. Halpen et ux. v. Waldron*, 2 Stra. 1065. Lease should be
be previously
registered.

(2) It appears to be proper to notice in the memorial that the deed was a mortgage, for the purpose of rendering intelligible the certificate to be entered in the margin of its being paid off. See *ante*, p. 236; but this is not required by the act, nor is the statement of any other condition or trust or purport of the deed. No variations therefore can be given where it is in trust for creditors, as the form will be the same as that above given of an absolute assignment. Mortgage.

(3) If it be an assignment by way of mortgage, say,

"Purporting to be a conditional assignment by way of mortgage to the said (*mortgagee*) of ALL, &c. Mortgage.

(4) Here set out the parcels contained in the assignment. Parcels.

It appears to be the practice in memorializing an assignment, to refer for the parcels to the prior registry of the lease, although a separate and distinct transaction. "This", as Mr. Sugden justly observes in his treatise on the laws of vendors and purchasers, "is extremely incorrect. The statute only authorizes such a reference where several writings are executed to perfect the *same* conveyance or security. And where the memorial does not comply with the directions of the act, the person claiming under the deed defectively registered, cannot insist on the benefit of the statute against a subsequent purchaser without notice, whose conveyance is duly registered." See *Vend. and Pur.* p. 577.

MEMORIAL.Assignment
(lease).

nessed by _____ of _____, and _____ of _____, and
is hereby required to be registered by (1) the said (*assignee*), as
witness his hand and seal hereunto subscribed and affixed this
day of _____

Signed and sealed in }
the presence of (2) }

(*Assignee*) L. S.

A. B.

C. D.

(1) See *post.* p. 638, n. (4).

(2) See *post.* 639, n. (1).

MEMORIAL.Bargain and
Sale.

No. CCCLXXXVII.

A Memorial to be registered of a Bargain and Sale enrolled, to accompany a Conveyance by Lease and Release.

A memorial to be registered (1), &c.

OF AN INDENTURE of bargain and sale bearing date the day of _____, and made between (*the bargainor*) of, &c. of the one part, and (*the bargainee*) of, &c. of the other part, purporting to be a conveyance by bargain and sale to be enrolled of certain lands (2) and premises situated at _____, in the parish of _____, in the county of Middlesex, mentioned and particularly described in indentures of lease and release bearing date respectively the _____ and _____ days of _____; a memorial whereof is registered at the same time herewith, and which said indenture of bargain and sale is intended to be enrolled in one of his Majesty's courts of Westminster, and is witnessed by _____, of _____, and _____,

Parcels need not be again set out, in a memorial where more deeds than one.

(1) See *ante*, p. 617.

(2) It is not necessary to again set out the parcels in this deed, as the registering acts declare, that where there are more writings than one for making or perfecting any conveyance or security which concerns the same premises, it shall be a sufficient memorial and register thereof, if all the premises be only once named or mentioned in the memorial of any one of the deeds or writings, and that the dates of the rest of the deeds and writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes be only set down in the memorial of the same, with a reference to the deed or writing whereof the memorial is so registered, that contains the parcels mentioned in all the deeds, and directions how to find the registering the same.

of _____, and is hereby required to be registered by the said (*bargainee*), as witness his hand and seal this _____ day of _____.

Signed and sealed }
in the presence of }

(*Bargainee*) L. S.

MEMORIAL.

Bargain and Sale.

A. B.

C. D.

*. * If the lands be situated in the West, East, or North Ridings of York, or in the town of Kingston-upon-Hull, the bargain and sale may be enrolled at the register office of the county in which they are situated, and an enrollment in such office will be as effectual as if enrolled in a court of record at Westminster. A memorial also in such case need not be registered, the acts declaring that such enrolment shall have the same force and effect as the registry of a memorial.

Bargain and sale
in Yorkshire
may be there
enrolled.

MEMORIAL.

Charge
(further).

No. CCCLXXXVIII.

A Memorial of a Further Charge.

A Memorial to be registered (1), &c.

Of a deed poll under the hand and seal of (*the mortgagor*) of, &c. bearing date the day of , in the year of our Lord 18 , indorsed upon an indenture of release, [*or assignment, as the case may be*], by way of mortgage, bearing date the day of , and made between, &c. a memorial whereof was registered on the day of B. , No. ; by which said deed-poll the said (*mortgagor*) did charge a further sum of money by way of mortgage upon All, &c. (2), which said deed-poll is witnessed by of , and of , and is hereby required to be registered (3) by (*the mortgagee*) of, &c. as witness his hand and seal this day of .

Signed and sealed in }
the presence of (4) }

(*Mortgagee*) L. S.

A. B.

C. D.

Parcels when to
be set out in
memorial of
further charge.

(1) See *ante*, p. 618.

(2) If the parcels be set out in the deed creating the further charge, they should be set out in the memorial; but if they were only referred to, the same words of reference should be used in the memorial as were used in the deed.

(3) See *post*. p. 638, n. (4).

(4) See *post*. p. 639, n. (1).

No. CCCLXXXIX.

* *A Memorial for the registering of a Charitable Donation (1).*

A MEMORIAL or statement in pursuance of an act for the registering and securing of charitable donations, whereby it is declared by the undersigned [*state the name or names of the person or persons who sign the memorial or statement*], that the real or personal estate [*state this as the case may be*] of the [*state the title or appellation of the charity, or charitable donation*] consists of [*state this as the case may be, and if real estate, whether it be in lands, tenements, or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements, or hereditaments, and where situate, and if personal estate, describe the nature of it, and how secured*] and the gross annual income arising therefrom amounts to £ , and the objects of which charity or charitable foundation are [*state the general or particular objects of the charity*] and which charity or charitable foundation was according to the best of my [*or our as the case may be*] knowledge and belief, founded by [*state by whom, and*

(1) By stat. 52 Geo. 3. c. 102, for the preservation of a memorial or statement (in the above form) of the real and personal estate, and of the gross annual income investment, and the general and particular objects of all charities and charitable donations, theretofore established and secured upon lands, or hereditaments, or money in the funds, for the benefit of any poor or other persons in England or Wales (not being Quakers), together with the names of the founders or benefactors, if known, and also of the persons in whose custody the deed, will, or other instrument, by which the same shall have been founded or increased, and of the trustees of the estates or funds thereof, shall be registered in the office of the clerk of the peace of the county or place, within six months after the passing the act, and all subsequent charities within twelve months, after the foundation thereof, and in default, any two or more persons interested in such charity are authorized to apply to the Court of Chancery or Exchequer in a summary way, concerning the same.

52 Geo. 3.
c. 102.

MEMORIAL.Charity.

if benefited, increased, or secured, by any other person, state the same, and by whom], and the deeds, wills, and other instruments, [state this as the case may be, and if no deeds, wills, or instruments exist, state the same] are to the best of my [or our as the case may be] knowledge and belief, in the custody, possession, or controul [state this as the case may be] of [state the name of the body corporate, or natural person] and the trustees, feoffees, or possessors, [state this as the case may be] of the said real or personal [state this as the case may be] are to the best of my [or our as the case may be] knowledge and belief, [state the name of the body corporate or natural person, as the case may be].

Signed A. B. } Trustee or trustees, feoffees, possessor, or pos-
 C. D. } sessors, of the real or personal estate [*as the*
 E. F. } *case may be*] of the charity or charitable do-
 nation hereby memorialized and registered.

MEMORIAL.

 Charity
 (parish).

No. CCCXC.

**A Memorial of a Charity given to a Parish (1).*

A MEMORIAL or statement in pursuance of an act for the registering and securing of charitable donations, whereby it is declared by the undersigned _____, doctor in divinity, rector of the parish of &c. [*as the case may be*], and _____, churchwardens of the said parish, that the real and personal estate of the charitable donations to the said parish of _____ are or consist as follows, (that is to say) of, &c. situated, &c. and the gross annual income arising therefrom now amounts to the sum of £ _____ or thereabouts; and which said lands were, to the best of our knowledge and belief, devised to the said parish by the will of _____, of, &c. in the year _____, for the purpose of the rents and profits thereof being distributed by the parson and churchwardens for the time being of the said parish to the most poor and needy of its parishoners for the time being [*or as the case was*]; and which said will was, as we believe, proved in the court of _____, and the probate thereof is, to the best of our knowledge and belief, in the custody of _____, and the trustees of the said estate are, to the best of our knowledge, A. B., &c. of, &c.; ALSO of two freehold messuages or dwelling-houses situated, &c. the gross annual income arising therefrom is £ _____ or thereabouts, and which said messuages or dwelling-houses, to the best of our knowledge and belief, were devised to the said parish by the will of, &c. in the year _____, that the rents and profits thereof might be disposed of in bread weekly to twenty poor parishioners who should go to church every Sunday and continue the whole service; ALSO of a certain hospital called Croydon Hospital, situated at Croydon, in the county of Surrey, the annual income of which arises from _____, amounting to the sum of £ _____ or thereabout, and the objects of which are for the sup-

(1) See *ante*, p. 627, n. (1).

MEMORIAL.Charity
(parish).

port and maintenance of such of the poor of the said parish as for the time being shall be of above the age of years; and which said charity or charitable foundation was, according to the best of our knowledge and belief, founded by Archbishop , in the year , but in whose custody, possession, or controul the deed, will, or other instrument by which the same was founded we are ignorant. Of certain Alms-houses called , situated, &c. the object of which charity or charitable foundation is for the support of poor widows of the said parish, and which said charity or charitable foundation was, to the best of our knowledge and belief, founded by , canon, in the year , and is supported by an annual rent-charge upon the real estates of him the said , situated at, &c.

No. CCCXCI.

**A Memorial to the Bank of England by a Foreigner requesting the Discount of Bills (1).*

To the Honourable the Governor, Deputy Governor, and Directors
of the Bank of England.

The Memorial of

Humbly sheweth,

THAT your memorialist has for many years past carried on a capital concern in the remitting and mercantile line, which he has conducted in a manner advantageous to this country, and in the course of which he has given satisfaction to those with whom he has had the honour to negotiate business, and acquired a respectability of character which emboldens him to seek assistance from you.

Your Honours must be sensible, that in a commerce like that in which your memorialist is engaged, great exertions are necessary to facilitate remittances to the many parts of Europe with which he corresponds. He has hitherto found every resource he could wish for in private discount. But as obstacles, it is well known, frequently occur to impede private accommodation, and these have at times subjected your memorialist to inconveniences, and as his remittances are generally made in bills, which perhaps none of you individually would refuse to discount, he flatters himself, that this circumstance, added to his character and connexions, will operate sufficiently in his favor

(1) This precedent has, perhaps, less connection with the proper subject of conveyancing than most of those to be found in the present collection; but having proposed to introduce in this edition such as relate more particularly to commercial matters, I have thought that the insertion of this will not be considered superfluous.

MEMORIAL.Discount.

to induce you to be pleased to make him an exception to your general rule of not discounting for foreigners. Your memorialist is assured that this rule has not been adopted on illiberal grounds; and cannot conceive that because some foreigners have merited censure, you would withhold that assistance from others, which in a great commercial nation like this, it is humbly conceived, should be extended to every useful and honourable member of society. Your memorialist having never in any instance shipped to the value of one pound sterling in bullion other than what he has had from the bullion office; having never attempted in any manner to lower the price of the Funds, but having always during the course of his long establishment and extensive concerns been zealously anxious to conduct himself in a manner to benefit a country he would glory in calling his own—presumes to pray, that you will be pleased to discount for your memorialist in the ordinary mode, as accustomed with natural subjects. And your memorialist, as in duty bound, shall ever pray, &c.

MEMORIAL.Judgments.

No. CCCXCIH.

A Memorial of a Judgment (1).

A Memorial to be registered, &c. (2)

OF a judgment in his Majesty's Court of _____, at Westminster, of _____ term, in the _____ year of the reign of King George the _____, between (3) A. B. plaintiff, and C. D. otherwise called C. D. of, &c. defendant, in a plea of debt for £ _____ and 63s. costs.

The Certificate.

I do hereby certify that judgment was signed in the above cause the _____ day of _____.

Signed E. F. (4)

Judgments not binding until registered.

(1) It is essential that the memorial of a judgment should be registered as soon as possible, as under the registering acts (see *post*. p. 637, n. (1)), no judgment, statute, or recognizance (other than such as shall be entered into in the name and upon the proper account of his Majesty, his heirs and successors,) will bind any lands, tenements, or hereditaments, but only from the time that a memorial thereof shall have been duly entered at the register office. This clause is general as to property in Middlesex; but in the East and West Ridings of York, and the town and county of Kingston-upon-Hull, if the judgment, statute, or recognizance, be registered within thirty days from the time of the acknowledgement or signing thereof, it will bind all the lands of the defendant at the time of such acknowledgement or signing: in the North Riding of York the time is limited to twenty days.

(2) See *ante*, p. 617.

Contents of memorial.

(3) The memorial of a judgment must contain the names of the plaintiffs, and the names, additions, and places of abode (if any such there be in such judgment) of the defendants, the sums thereby recovered, and the time of the signing thereof.

Memorial must be accompanied by certificate and affidavit.

(4) In order to enable judgments, statutes, and recognizances to be registered, the party desiring the same is required by the registering acts to produce to and leave with the register or master to be filed in the Register Office, a memorial of such judgment, statute, or recog-

MEMORIAL.Judgments.*The Affidavit.*

G. H. of, &c. maketh oath and saith, that he saw (1) ,
secondary of the Court of King's Bench, sign the certificate of the
judgment in the memorial above mentioned.

Sworn before me }
the day of }

G. H. (2)

J. K. (3)

nizance, signed by the proper officer or his deputy, who shall sign such
judgment in the same office, or by the proper officer in whose office such
statute or recognizance shall be enrolled, together with an affidavit sworn
before one of the judges at Westminster or a Master in Chancery, that
such memorial was duly signed by the officer whose name shall appear to
be thereunto set.

(1) If the judgment be obtained in the Court of Common Pleas, say,
"One of the prothonotaries of the Court of Common Pleas."

Common Pleas.

If in the Exchequer, say,

Exchequer.

"Clerk of the Pleas of the Court of Exchequer."

(2) This must be signed by the secondary of the Court of King's
Bench, if the judgment be obtained in that Court; or if it be obtained
in the Court of Common Pleas or Exchequer, by the prothonotary or
clerk of the pleas.

Signature of
certificate.

(3) This must be a Master in Chancery, or a judge of the court where
the judgment was entered up.

MEMORIAL.

Lease.

No. CCCXCIV.

Memorial of a Lease for Years.

Variations where it is a lease for Lives. Where it is a demise by way of Mortgage.

A Memorial to be registered (1), &c.

OF an indenture of demise bearing date the day of ,
in the year of our Lord 18 , and made between (*the lessor*)
of, &c. of the one part, and (*the lessee*) of, &c. of the other part;
purporting (2) to be a lease for the term of years to the
said (*lessee*) of ALL, &c. (3) which said indenture of demise is wit-
nessed by , of , and , of , and
is hereby required to be registered by (4) the said (*lessee*), as witness
his hand and seal.

Signed and sealed in }
the presence of (5) }

(*Lessee*) L. S.

A. B.

C. D.

Lease for lives,

Mortgage,

Parcels,

(1) See *ante*, p. 617.

(2) If the lease be for lives, say,

"Purporting to be a lease for lives to the said (*lessee*) of ALL, &c.

If it be a mortgage by demise, say,

"Purporting to be a mortgage to the said (*mortgagee*) of ALL,

&c.

(3) Insert here the description of the premises contained in the lease.

(4) See *post*. p. 638, n. (6).

(5) See *ibid*. n. (7).

MEMORIAL.Lease and Release.

No. CCCXCV.

A Memorial of a Conveyance by Lease and Release (1).

Variations where it is by way of Mortgage. Where the conveyance is by Feoffment, Bargain and Sale or Appointment. Where it is by way of Settlement.

A Memorial to be registered, &c. (2)

Of indentures of (3) lease and release, the lease bearing date the

(1) Under the statutes of the 2 and 3 Ann. c. 4. 5 Ann. c. 18, 6 Ann. c. 35. 7 Ann. c. 20, and 8 Geo. 2. c. 6, a memorial of all deeds, conveyances, wills and devises of or affecting any houses, manors, lands, tenements and hereditaments in the West, East and North Ridings of Yorkshire, and the town of Kingston-upon-Hull, and in the county of Middlesex, may be registered in the manner by the said acts mentioned, and every such deed, conveyance, will or devise, that shall not be so registered, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such memorial be registered before the registry of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim. And although such subsequent grantee have full knowledge of the prior unregistered conveyance, *Doe dem. Robinson v. Alsop*, 5 B. and Ald. 142. But it seems equity will in some cases relieve, *Le Neve v. Le Neve*, 3 Atk. 646¹; and see *Doe v. Routledge*, Cowp. 712; and *Worsley v. Dematters*, 1 Burr. 467.

Deeds affecting lands in Middlesex and Yorkshire must be registered.

The memorial to be registered, in pursuance of the above mentioned acts, must be written on vellum or parchment, and must contain the day of the month and the year when such deed, conveyance or will, bears date, and the names and additions of all the parties to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance or will, and the places of their abode; and must also express or mention the honors, manors, lands, tenements and hereditaments, in such deed, conveyance or will, and the names of all the parishes, townships, hamlets, precincts or extra-parochial places within the county where any such honours, manors, lands, tenements or hereditaments are situated, as are given, granted, conveyed, devised or in any way affected by such deed, conveyance or will, in such manner or to the same effect as the same are expressed or mentioned in such deed, conveyance or will.

What the memorial must contain.

These acts do not extend to copyhold estates, nor to leases at rack-rent, nor to any lease not exceeding twenty-one years, where the actual possession and occupation goes along with the lease nor to any of the chambers in Serjeants' Inn, the Inns of Court, or Inns of Chancery.

Registry acts do not extend to copyholds.

MEMORIAL.Lease and Re-
lease.

day of _____, in the year of our Lord 18____, and made between, &c. and the release bearing date the _____ day of _____, and (4) made between, &c., purporting to be an absolute conveyance to the said (*purchaser*) and his heirs, of ALL, &c. (5), and which said indentures of lease and release are respectively witnessed by _____, of _____, and _____ of _____, and are hereby required to be registered by the said (*purchaser*), as witness his hand and seal (6), this _____ day of _____.

Signed and sealed in
the presence of (7)

(*Purchaser*) L. S.

A. B.

C. D.

Appointment.

(2) See *ante*, p. 617.

(3) If the conveyance be by appointment, say,

"Of indentures of lease and appointment and release, the lease bearing date, &c., and made between, &c., and the appointment and release bearing date, &c., *as above*."

Feoffment, &c.

If the conveyance be by feoffment or bargain and sale, say,

"Of an indenture of feoffment [*or bargain and sale as the case may be*]."

Mortgage.

(4) If the memorial be of a mortgage in fee, say,

"Purporting to be a conditional conveyance by way of mortgage to the said (*mortgagee*) and his heirs, of ALL, &c." *as above*.

Settlement.

If the memorial be of a conveyance by way of settlement, say,

"Purporting to be a settlement made upon the marriage of the said (*intended husband*) and (*intended wife*), of ALL, &c." *as above*.

Parcels.

(5) Insert here the description of the premises contained in the deed intended to be registered.

Memorial to be
under hand and
seal.

(6) This memorial must be under the hand and seal of some or one of the grantors or grantees, his or their heirs, executors, administrators, guardians or trustees.

Must be attested
by two wit-
nesses.

(7) The memorial must be attested by two witnesses, one of whom must be a witness to the execution of a deed or conveyance mentioned in the memorial, and must, upon his oath before one of the registers or his deputy, or before a master in chancery, ordinary or extraordinary, prove the signing and sealing of such memorial, and the execution of the deed or conveyance mentioned therein.

* * The registered memorial of a deed is evidence of the existence of it if the party in possession fail to produce it on notice, *Molton v. Harris*, 2 Esp. 549.

No. CCCXCVI.

*A Memorial of a Statute.**Variations where it is of a Recognizance.*

A Memorial to be registered (1), &c.

Of a statute merchant, [*or staple as the case may be*] (2) bearing date the day of , whereby (*the cognizor*) of, &c. (3) acknowledged before that he owed to (*the cognizee*) of, &c. the sum of £ , to be paid on the day of

Certificate.

I do hereby certify, that the statute, [*or recognizance*] above mentioned, was enrolled the day of

A. B. (4)

(1) See *ante*, p. 617.

(2) If the memorial be of a recognizance in the Court of Chancery, Recognizance say,

“Of a recognizance entered into in his Majesty’s High Court of Chancery, bearing date at Westminster, the day of , and acknowledged before one of the masters of the said court, whereby (*the cognizor*) of, &c. before our Lord the King, in his Chancery appearing, acknowledged to owe to , Master of the Rolls, and , one of the masters of the said court, the sum of £ , to be paid to the said , and on the day of next ensuing the date of the said recognizance.”

(3) The memorial of a statute or recognizance, must contain the date of such statute or recognizance, and the places of abode of the cognizors and cognizees, and for what sums, and before whom the same were acknowledged. Contents of memorial.

(4) This certificate must be signed by the officer in whose office the statute or recognizance was enrolled. Signature of certificate.

MEMORIAL.Statute.*The Affidavit.*

C. D. of, &c. maketh oath and saith that he saw (1)
clerk of the recognizances in the nature of a statute staple, sign the
above certificate.

Sworn before me the
day of

Signed (2)

J. K. (3).

(1) See *ante*, p. 635, n. (1).

(2) See *ibid.* n. (2).

(3) See *ibid.* n. (3).

No. CCCXCVII.

A Memorial of a Will (1).

A Memorial to be registered &c. (2).

OF the last will and testament of (*the testator*), late of in the county of Middlesex, deceased, bearing date (3) the day of , in the year of our Lord , of and concerning ALL, &c. (4); which said will is witnessed by A. B. of, &c., C. D. of, &c. and C. F. of, &c. and is hereby required to be registered by (*the devisee*) of, &c. one of the devisees in the said

(1) A memorial of all wills affecting lands in Yorkshire or Middlesex, must be registered within the space of six months after the decease of the deviser or testatrix, dying within Great Britain; or within the space of three years after his or her decease, if dying upon, or in any parts beyond the seas.

Memorial of will must be registered within a stated time.

(2) See *ante*, p. 617.

(3) This memorial must contain the day of the month and year when the will bears date, the name and addition, and late place of abode of the deviser or testatrix, and must express or mention the honors, manors, lands, tenements and hereditaments contained in the will, and the names of all the parishes, townships, hamlets, precincts or extra-parochial places within the county where any such honors, manors, lands, tenements and hereditaments lie, in such manner, or to the same effect as the same are mentioned or expressed in the will.

What such memorial must contain.

(4) The parcels should be set out as they are described in the will, or if the words of the will be general, say,

Parcels.

“Of and concerning all the lands, tenements, hereditaments and premises, in the county of Middlesex, of which the said (*testator*) was seised or possessed at the time of his decease,” *pursuing the words of the will.*

MEMORIAL.Will.

will mentioned, as witness his hand and seal this day
of

Signed and sealed in
the presence of (1)

(Devisee) L. S.

A. B.

C. D.

(1) See *ante*, p. 638, n (4).

END OF THE SECOND VOLUME.



Standard Law Library



3 6105 06 137 764 9